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THE OFFICIAL MONTH IN REVIEW

IN a brief but impressive ceremony at the Manila South Harbor on February 1, Vice-President Fernando Lopez accepted in behalf of the Philippines, a note signifying the formal transfer of the newly constructed Pier 9 from the United States Government, represented by Ambassador Myron M. Cowen. In his acceptance speech, the Vice President cited the project as a "symbol of the strong ties that bind the peoples of two nations."

ACTING Foreign Secretary Felino Neri disclosed on February 2 that three American technical experts are coming to Manila sometime in April, this year, to discuss with local authorities the details of the implementation of President Truman's Point Four program for the Philippines. The experts will also explore the local field for agricultural and industrial development possibilities, it was learned.

A VAST program of activities directed primarily toward an intensified immunization campaign against common infectious diseases and for the lowering of death rates caused by tuberculosis, beri-beri, gastro-intestinal diseases and malaria, has been outlined for the next four years by Acting Secretary of Health Regino Padua in his report to Malacañan. At the same time, a campaign on personal hygiene and environmental sanitation will be waged through public-health education and information, the report further disclosed.

INDIA formally served notice to the Philippines on February 6 of her desire to enter into a bilateral barter trade treaty with the Philippines, according to a foreign office announcement. It was understood a Philippine draft of the proposed treaty was furnished India Consul General Menon by the foreign office for transmittal to the New Delhi Government.

VICE-President Lopez received William Walton Butterworth, Assistant Secretary of State for Far Eastern Affairs, on February 7 at Malacañan. The American visitor was accompanied by U. S. Ambassador Myron M. Cowen. Butterworth, a specialist in international economics, arrived aboard a U. S. Air Force plane from Tokyo on his way to Bangkok to attend a conference of American diplomats in the Far East. During his brief sojourn here, Butterworth was engaged in top level conferences with Acting Foreign Affairs Secretary Felino Neri and other department secretaries.

IN line with President Quirino's economic development program, the Department of Justice has set as one of its major objectives during the next four years the expansion of the agricultural and industrial activities of the Bureau of Prisons and the acceleration of the hearing of cadastral cases so as to enable the General Land Registration Office to issue as many Torrens titles as possible to landowners. This was the gist of the report submitted by the Department of Justice to Malacañan on February 10. The report added that with its manpower of almost 12,000, the Bureau of Prisons expects to carry out its program of industrial and agricultural development, if given enough facilities.

THE alarming shortage of coins throughout the country, particularly in the City of Manila, caused the transmission of a diplomatic note from the Department of Foreign Affairs to the Chinese embassy in Manila expressing Philippine concern over the alleged practice of Chinese nationals particularly those living in Batangas, to hoard coins. The note also bewailed reports that Chinese nationals have been reportedly "spreading false rumors that the Philippine peso will be devalued."

VICE-President Lopez, in a speech before a group of local businessmen at the Manila Hotel on the occasion of the "Made-in-the-Philippines" week on February 11, declared that the Filipinos should not be content with merely being buyers but should make use of the ingenuity and resourcefulness they demonstrated during the enemy occupation to produce here the necessities of life. [*See* HISTORICAL PAPERS AND DOCUMENTS *for full text of speech.*]

CONCRETE measures calculated to bring material improvement in the lives of the workers have been mapped out by the Department of Labor to meet the challenge of communist propaganda, Undersecretary of Labor Jose Figueras disclosed in his initial report to Malacañan on February 11. The enactment of laws designed to improve the living and working conditions of the workers will be urged on Congress, the report stated.

PRESIDENT Elpidio Quirino returned to Manila on February 11 after a 34-day sojourn in the United States where he underwent a successful kidney operation at the Johns Hopkins hospital. In a brief extemporaneous speech at the Manila International Airport shortly after his arrival, the President said: "I come home with a new lease of life and with a renewed faith in our future. I assure you that you have a 'renewed' President in many respects. At this, my grateful moment, I ask you to renew with me the faith and confidence in one another." The President returned aboard the P.A.L. plane *Mindoro* together with immediate members of his family and other members of his party. A crowd of 10,000 thronged the airport to welcome the Chief Executive.

A SHIFT in the emphasis of the lending policy of the Rehabilitation Finance Corporation was decided on February 13 after a lengthy conference in Malacañan between President Quirino, Secretary of Finance Pio Pedrosa, R.F.C. Chairman Delfin Buencamino and Budget Commissioner Pio Joven. Accordingly the former R.F.C. policy of granting loans for real estate, building construction and other rehabilitation projects was revised into the policy of granting loans primarily for economic development projects.

PRESIDENT Quirino issued Executive Order No. 302 on February 14, exempting from import control construction materials needed for the completion of government projects financed by war damage funds. The order was issued upon recommendation of Secretary of Public Works Prospero Sanidad, who pointed out that most of the government projects involved must be finished by June 30 this year or the war damage funds for them would revert to the U. S. Treasury.

THE Cabinet at a meeting on February 14, ratified the new report of the special committee on the controversial Palma Book authorizing the release of Rizal's autobiography as optional reading in Philippine secondary schools. The cabinet maintained that the religious aspect of the book is not the concern of the Government. By the same token, the Government will not concern itself with the decision of the Catholic hierarchy to ban the book from their institutions.

THE President, during his regular meeting with the Council of State on February 15, gave the council a lengthy "fill-in" on his conversation with President Truman and Secretary of State Dean Acheson during his stay in the United States. The Chief Executive told the council that as a result of his visit to Washington, most of the questions affecting Philippine-American relations were clarified. He added that he looks forward to continued close association and mutual assistance between the two countries.

PRESIDENT Quirino gave the green light for the establishment of a Philippine Legation in Djakarta, capital of the Republic of Indonesia, with Roving Ambassador Manuel V. Gallego as first diplomatic envoy with the personal rank of Ambassador. The decision was made by the President on February 17 during a regular Cabinet meeting.

MEANWHILE, the Cabinet authorized the importation by private importers of 14,000 tons of cement from Japan to cover the expected shortage of cement needed for urgent construction work during the next three months. The Cabinet also referred to Secretary of Labor Primitivo Lovina for possible administration backing the draft of a proposed legislation for a five-day-week work for all government employees.

PRESIDENT Quirino signed on February 20 the instrument of ratification of the International Wheat Agreement, thus officially making the Philippines a signatory to the world wheat pact. The President signed the pact in the presence of Central Bank Governor Miguel Cuaderno and Minister Domingo Imperial.

"LET us make every home a food granary, every citizen a food producer." This was the slogan endorsed by the Cabinet on February 21 during its meeting for this year's national food production campaign. The slogan was contained in a message prepared by Secretary of Agriculture and Natural Resources Placido Mapa upon his assumption as general manager of national food production campaign.

THE Cabinet, in the same meeting, approved a list of priorities in the allocation of dollar exchange to determine which commodities should be given preference in the distribution of available foreign exchange this year.

MALACAÑAN announced on February 23 the issuance by the President of Executive Order No. 303, returning to the Armed Forces of the Philippines seven battalions transferred to the Philippine Constabulary in September, 1948. The order was issued in line with the President's policy of concentrating national police work in the Constabulary and strengthen the Army's combat teams for field work.

EXECUTIVE Secretary Teodoro Evangelista returned to Manila on February 24 after a lengthy absence from the country following his designation as Philippine delegate to the United Nations General Assembly in Lake Success and to the Trusteeship Council meeting in Geneva. Mr. Evangelista declared that with the world opinion behind it, the United Nations is bound to succeed as an instrument to promote world peace.

MALACAÑAN announced on February 25 that President Quirino issued a proclamation allocating a site for the Filipino Veterans Hospital. The proclamation reserves a parcel of land approximately 549,120 square meters in area, situated along Timog avenue in Diliman, Quezon City. The site is owned by the Government under the administration of the People's Homesite and Housing Corporation.

THE Department of Foreign Affairs in a statement on February 27, discounted a press report to the effect that Australian External Affairs Minister Percy Claude Spender will visit Manila reportedly to confer with President Quirino on the projected Southeast Asia Union. A foreign office spokesman said Minister Spender's forthcoming trip to Manila will be in the nature of a goodwill visit in response to an invitation extended to him by the Philippine Government.

VICE-President Fernando Lopez in a speech before the second annual convention of the National Land Transportation Operators Association at the Selecta on February 27, vehemently scored "cut throat" competition among land transportation operators, terming it as "unbridled, irresponsible and ruinous," and as "the greatest threat to the future stability of the land transportation business in the country."

PRESIDENT Quirino appealed to the people to cooperate with the Government's food production campaign by setting up fruit and vegetable gardens "in every available space" in their backyards. The appeal was sounded through the officials of the University of the Philippines who called on the President on February 27 to felicitate him on his successful operation

and safe return from the United States. During the call, the President took occasion to inquire into the problems of the State university.

APPROVAL of a one-million peso overdraft line with the Philippine National Bank for further implementation of the projected five-year rehabilitation program of the local tobacco industry was urged on the President by Vice-President Lopez in the latter's capacity as chairman of the Government Enterprises Council. The funds sought under this credit line shall be used to provide additional working capital to finance the activities embraced in the five-year rehabilitation program of the National Tobacco Corporation.

THE Cabinet at its meeting on February 28, authorized government participation in the Trade and Industries Fair to be held in conjunction with the fifth world congress of the Junior Chamber International in the Manila Hotel. The fair was intended to familiarize the visiting delegates to the Jaycees convention with Philippine agricultural and industrial products.

A COMMISSION to assist the President in the reorganization of the executive departments and other instrumentalities of the Government, as well as government-owned and controlled corporation, was created by President Quirino in an administrative order issued on February 28. The Reorganization Commission is charged with the duty of submitting within six months a report containing recommendations for the reorganization of government offices and corporations, with a view to promoting simplicity, economy and efficiency in the government service. The Commission is composed of Ramon Fernandez, Chairman, and Luis P. Torres, Pio Joven, Jose Paez, Teofilo Sison, N. H. Reyes, Pablo Lorenzo, Aurelio Montinola, and Jose Gil, members.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 302

AMENDING EXECUTIVE ORDER NO. 297, DATED DECEMBER 24, 1949

By virtue of the powers vested in me by Republic Act No. 330, entitled "An Act authorizing the President of the Philippines to establish a system of import control by regulating imports of non-essential and luxury articles, creating an Import Control Board, authorizing the issuance of rules and regulations to carry into effect such control and penalizing violatiosn of this Act," I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Section 2 of Executive Order No. 297 is hereby amended to read as follows:

"Articles or materials included in Appendix A which are necessary for the operation of locally established industries and those needed in construction projects covered by rehabilitation contracts, financed partly or wholly by War Damage funds, as determined in each case by the Import Control Board, shall not be subject to the percentage reduction fixed in Appendix B, but the manufacturer or contractor shall apply for import permit therefor."

SEC. 2. This Order shall take effect upon its promulgation.

Done in the City of Manila, this 14th day of February, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

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MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 303

RETURNING TO THE ARMED FORCES OF THE PHILIPPINES SEVEN PHILIPPINE CONSTABULARY BATTALIONS OUT OF THE EIGHT THOUSAND OFFICERS AND ENLISTED MEN OF THE ARMED FORCES OF THE PHILIPPINES TRANSFERRED TO THE CONSTABULARY UNDER EXECUTIVE ORDER NO. 174, DATED SEPTEMBER 13, 1948.

WHEREAS, effective as of January 1, 1948, there were transferred to the Philippine Constabulary under Executive Order No. 174, dated September 13, 1948, 8,000 officers and enlisted men of the Armed Forces of the Philippines; and

WHEREAS, of this number of officers and enlisted men the services of seven battalions of the Philippine Constabulary are now needed in the Armed Forces of the Philippines;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby return, effective immediately, to the Armed Forces of the Philippines, seven battalions of the Philippine Constabulary which form part of the 8,000 officers and enlisted men of the Armed Forces of the Philippines transferred to the Philippine Constabulary under Executive Order No. 174, dated September 13, 1948.

Such equipment and supplies as are now in the possession of the officers and enlisted men concerned are hereby also returned to the Armed Forces of the Philippines.

Executive Order No. 174, dated September 13, 1948, is hereby amended accordingly.

Done in the City of Manila, this 17th day of February, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 304

CALLING UPON ALL INHABITANTS OF THE PHILIPPINES AND MOBILIZING ALL GOVERNMENT AGENCIES AND INSTRUMENTALITIES FOR THE INTENSIFICATION OF THE NATIONAL FOOD PRODUCTION CAMPAIGN.

WHEREAS, it has become imperative to take immediate steps to increase the local production of foodstuffs to fill the shortage created by limited importation thereof, to check their rise in price, and to reduce dollar expenditures for the import of such foodstuffs as may very well be grown in our country;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. A nation-wide campaign for the production of foodstuffs suited to local conditions shall be further intensified under the direction of the Secretary of Agriculture and Natural Resources, who is hereby designated as the General Manager of the national food production campaign.

SEC. 2. To carry this Order into effect, the Secretary of Agriculture and Natural Resources is hereby empowered to promulgate such rules and regulations as may be necessary to insure the success of the campaign.

SEC. 3. The Secretary of Agriculture and Natural Resources is hereby authorized to call upon such entities and instrumentalities of the Government as may be needed to give the necessary cooperation for the successful prosecution of the campaign.

SEC. 4. There are hereby created in each province, city and municipality, local committees to supervise the campaign, composed as follows:

Provincial Committee:

Provincial Governor	Chairman
Superintendent of Schools	Member
Provincial Treasurer	Member
District Engineer	Member
A private citizen	Member
Provincial Agricultural Supervisor	Executive Officer

City Committee:

City Mayor	Chairman
City Treasurer	Member
City Superintendent of Schools	Member

City Engineer	Member
A private citizen	Member
City Agronomist	Executive Officer

Municipal Committee:

Municipal Mayor	Chairman
Principal Teacher	Member
Municipal Treasurer	Member
Municipal Agricultural Inspector	Executive Officer

SEC. 5. The Secretary of the Interior, the Secretary of Education, the Secretary of Finance, and the Secretary of Public Works and Communications shall instruct all officials under their respective departments mentioned in the preceding section to comply with all directives which the Secretary of Agriculture and Natural Resources may issue from time to time in connection with this campaign, and to see to it that the same are observed by all private citizens concerned.

SEC. 6. All inhabitants and civic and religious organizations of the Philippines are hereby enjoined to participate actively in the production of foodstuffs and to carry out effectively the aims of the campaign. Employees of the various entities and agencies of the National, provincial, city and municipal governments, shall take the lead in the campaign and set the example in their respective communities in the cultivation of vacant lots and backyards and in undertaking poultry and piggery projects.

SEC. 7. For the effective accomplishment of the food production campaign, the provisions of Executive Order No. 223, dated June 14, 1949, should be given wide publicity so that wherever vacant agricultural lands of the public domain are available, facilities should be provided to expedite their occupation for the purposes herein set forth.

SEC. 8. Such funds as may from time to time be provided for by the National, provincial, city and municipal governments for undertaking the food production campaign authorized in this Order shall be disbursed and duly accounted for by the officials concerned with the approval of the Secretary of Agriculture and Natural Resources.

Done in the City of Manila, this 17th day of February, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 169

RESERVING FOR VETERANS' HOSPITAL SITE PURPOSES A CERTAIN PARCEL OF LAND BELONGING TO THE PRIVATE DOMAIN OF THE GOVERNMENT, SITUATED IN THE DISTRICT OF DILIMAN, QUEZON CITY, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 64(*e*) of the Administrative Code, I hereby withdraw from sale or settlement and reserve for Veterans' Hospital site purposes under the administration of the Philippine Veterans Affairs, subject to private rights, if any there be, certain parcel of land belonging to the private domain of the Government, situated in the District of Diliman, Quezon City, Island of Luzon, and more particularly described in the Bureau of Lands plan Bsd-10352, to wit:

LOT R. P.-3-B-4-A, BSD-10352

The Republic of the Philippines
(Veterans Hospital site)

"A parcel of land (lot R. P.-3-B-4-A of the subdivision plan Bsd-10352, being a portion of lot R. P.-3-B-4 described in plan Psd-7365, G.L.R.O. Record No. .....), situated in the District of Diliman, Quezon City, Island of Luzon. Bounded on the NE. and SE., by Lot R. P.-3-B-4-B of the subdivision plan; on the SW., by Timog Avenue (40.00 m. wide); and on the NW., by lot R. P.-3-B-4-B of the subdivision plan. Beginning at a point marked "1" on plan, being N. 9° 27′ W., 1,784.92 m. from B.L.L.M, 7, Caloocan cadastral 267, thence N. 12° 37′ E., 220.00 m. to point "2"; thence N. 12° 37′ E., 220.00 m. to point "3"; thence N. 12° 37′ E., 200.00 m. to point "4"; thence S. 77° 23′ E., 247.67 m. to point "5"; thence S. 77° 23′ E., 234.33 m. to point "6"; thence S. 77° 23′ E., 234.33 m. to point "7"; thence S. 77° 23′ E., 141.67 m. to point "8"; thence S. 12° 37′ W., 200.00 m. to point "9"; thence S. 12° 37′ W., 220.00 m. to point "10"; thence S. 12° 37′ W., 220.00 m. to point "11"; thence N. 77° 23′ W., 141.67 m. to point "12"; thence N. 77° 23′ W., 234.33 m. to point "13"; thence N. 77° 23′ W., 234.33 m. to point "14"; thence N. 77° 23′ W., 247.67 m. to the point of beginning; containing an area of 549,120 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 11, by iron bar driven in adobe stone ground; and the rest, by B.L. Cylindrical concrete monuments; bearings true; declination 0° 48′ E.; date of the original survey, December, 1910—June, 1911 and that of the subdivision survey, January 10-14, 1950."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 22nd day of February, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 109

CREATING A COMMISSION TO ASSIST THE PRESIDENT IN REORGANIZING THE DIFFERENT EXECUTIVE DEPARTMENTS, BUREAUS, OFFICES, AGENCIES AND INSTRUMENTALITIES OF THE GOVERNMENT, INCLUDING THE CORPORATIONS OWNED OR CONTROLLED BY IT, PURSUANT TO THE PROVISIONS OF REPUBLIC ACT NO. 422.

WHEREAS, it is urgently necessary that the reorganization contemplated in Republic Act No. 422 be carried out as expeditiously as possible;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby create a reorganization commission which shall be composed of the following:

Hon. Ramon Fernandez, Chairman
Hon. Luis P. Torres, Member
Hon. Pio Joven, Member
Hon. Jose Paez, Member
Hon. Teofilo Sison, Member
Hon. H. B. Reyes, Member
Hon. Pablo Lorenzo, Member
Hon. Aurelio Montinola, Member
Hon. Jose Gil, Member and Executive Officer

The Commission shall make a factual survey of the Government, and shall submit such reforms and changes in the different executive departments, bureaus, agencies, boards, commissions, offices and other instrumentalities thereof, including all corporations owned or controlled by the Government, as it may deem proper and necessary to effect and promote simplicity, economy and efficiency in the government service, pursuant to the policy declared in said Act. The Commission shall submit its report and

recommendation not later than six months from the issuance of this Order.

In the performance of its work, the Commission may secure the services of such officers and employees of any department, bureau, agency, board, commission, office or instrumentality of the Government, whose assistance it may require in accomplishing its task.

The Commission or its duly authorized representative shall, for the purpose of securing needed data and information, have access to, and have the right to examine, any books, documents, papers or records of the executive departments, bureaus, agencies, boards, commissions, offices and other instrumentalities of the Government, and to summon witnesses and any official or employee of the Government.

Done in the City of Manila, this 28th day of February, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 110

AUTHORIZING THE EMPIRE INSURANCE COMPANY TO BECOME A SURETY UPON OFFICIAL RECOGNIZANCES, STIPULATIONS, BONDS AND UNDERTAKINGS.

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for the doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or guaranteeing of the performance, of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organ-

ized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performance of any contract or undertaking made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body executive, legislative or judicial shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking, unless such corporation has been authorized to do business in the Philippines in the manner provided by the provisions of said Act No. 536, as amended, nor unless such corporation has by contract with the Government of the Philippines been authorized to become surety upon official recognizances, stipulations, bonds and undertakings; and

WHEREAS, the Empire Insurance Company is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended;

NOW, THEREFORE, I, Elpidio Quirno, President of the Philippines, by virtue of the powers in me vested by law, do hereby authorize the Empire Insurance Company to become a surety upon official recognizances, stipulations, bonds and undertaking in such manner and under such conditions as are provided by law, except that the total amount of immigration bonds that it may issue shall not, at any time exceed its admitted assets.

Done in the City of Manila, this 28th day of February in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

DEPARTMENT ORDER No. 165

February 4, 1950

CLASSIFICATION OF THE MUNICIPALITY OF LAGONGLONG, MISAMIS ORIENTAL

For the information and guidance of all concerned, publication is hereby made that the municipality of Lagonglong, Misamis Oriental, organized under Executive Order No. 234, series of 1949, has been classified by His Excellency, the President of the Philippines, under date of January 31, 1950, as fourth class, pursuant to the provisions of Republic Act No. 130.

The classification of this municipality shall take effect on the date it begins to exist as such.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 166

February 15, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF TALISAY, CEBU

For the information and guidance of all concerned, publication is hereby made that under date of February 6, 1950, the municipality of Talisay, Cebu, has been classified by His Excellency, the President of the Philippines as second class, effective as of July 1, 1949, subject to the condition that said municipality shall pay the full amount of the increase in the salary of the justice of the peace thereof resulting from such change in classification until the portion thereof payable by the National Government shall have been duly authorized in the General Appropriation Act.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 167

February 15, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF MALITA, DAVAO

For the information and guidance of all concerned, publication is hereby made that under date of February 6, 1950, the municipality of Malita, Davao, has been classified by His Excellency, the President of the Philippines, as second class, effective as of July 1, 1949, subject to the condition that said municipality shall pay the full amount of the increase in the salary of the justice of the peace thereof resulting from such change in classification until the portion thereof payable by the National Government shall have been duly authorized in the General Appropriation Act.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 168

February 15, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF AGOO, LA UNION

For the information and guidance of all concerned, publication is hereby made that under date of February 2, 1950, the municipality of Agoo, La Union, has been classified by His Excellency, the President of the Philippines as second class, effective March 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

February 1, 1950

FIREARMS LICENSES AND/OR PERMITS— WHO MAY ISSUE

To all Provincial Governors, City Mayors, and the Chief of Constabulary:

Section 905 of the Administrative Code empowers the President of the Philippines to prescribe such forms and promulgate such regulations as he shall deem necessary for the proper enforcement of the Firearms Law. The Chief Constabulary has been authorized under existing regulations to approve or disapprove applications to possess firearms. The power to issue licenses and/or permits to possess firearms is, therefore, vested in the Chief of Constabulary who acts for the President. Any person desiring to possess or hold a firearm must apply with the Chief of the Constabulary on the application so prescribed for such license or permit to hold firearm.

In the case of National offices, provinces, cities, (except Manila), municipalities and other political subdivisions, firearms owned by them shall be registered with the Chief of Constabulary on a form prescribed therefor, and a certificate of registration shall be issued for said firearms. This refers to firearms regularly and lawfully issued to members of the Armed Forces of the Philippines and the Philippine Constabulary, provincial governors and members of provincial boards, lieutenant-governors, provincial treasurers, guards in the Bureau of Prisons, provincial guards, municipal police, city and municipal mayors and municipal district mayors, municipal treasurers, vice-mayors, councilors and barrio lieutenants when such firearms are in the possession of such officials for use in the performance of their official duties. Special permits to possess firearms are issued to officials and employees upon application of their respective chiefs of office while regular permits are issued to private individuals possessing the necessary qualifications required by law and/or regulations.

It is therefore obvious that no firearm may be held or possessed by any person, offcial or employee, irrespective of position, rank or standing, without the proper registration, license or permit issued by the Chief of Constabulary or under his direction or authority. No other national, provincial, city or municipal official is lawfully authorized to issue firearm registration, licenses or permits to any individual or official or employee. Any person or official found in possession of firearms without the proper registration, license or permit issued by the Chief of Constabulary or under his direction or authority shall therefore be arrested and accused in the proper court for illegal possession of firearm, penalized by Section 2692 of the Administrative Code, as amended by Republic Act No. 4.

Firearms now in the hands of members of temporary police forces or civilian guards without proper registration, license or permit duly issued in accordance with the foregoing paragraphs should be confiscated, taken on deposit or registered in accordance with the preceding paragraphs. Appointment as policemen or temporary policeman or civilian guard does not, *ipso facto*, entitle the appointee to possess firearm without the proper registration, license or permit indicated above.

The Chief of Constabulary will please instruct all provincial commanders to see to it that this Circular is strictly complied with.

Provincial Governors are also hereby requested to transmit the contents of this circular to all mayors under their respective jurisdictions and give its contents wide publicity.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

February 10, 1950

LIMIT OF TRANSPORTATION EXPENSES FOR THE USE OF GOVERNMENT-OWNED MOTOR VEHICLES

To all Provincial Governors and City Mayors:

For the information and guidance of all concerned, there is quoted hereunder a pertinent portion of the 3rd Indorsement, dated December 16, 1949, of the Acting Auditor General, which is self-explanatory:

> "In view, however of the austerity program enunciated by His Excellency, the President of the Philippines, it is suggested that provincial and city officials under their respective jurisdictions be enjoined to limit their transportation expenses for the use of government-owned motor vehicles to the corresponding maximum allowance which may be granted each of them while using their privately-owned vehicles, in accordance with the schedules prescribed by paragraph 1 of Executive Order No. 172, series of 1938."

In line with the austerity program enunciated by His Excellency, the President of the Philippines, provincial and city officials under the jurisdiction of this Department are hereby enjoined to limit their transportation expenses as suggested herein by the Office of the Auditor General.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

February 15 1950

INTENSIFICATION OF NATIONAL FOOD PRODUCTION CAMPAIGN

To all Provincial Governors and City Mayors:

At a meeting of the Cabinet held yesterday, it was decided to intensify the food production campaign being carried on under the auspices of the Department of Agriculture and Natural Resources with the cooperation of the Departments of the Interior, Finance, Public Works and Communications, Education and the Social Welfare Commission.

The need of intensifying food production has arisen from the diminishing imports of foodstuffs as the result of the Government's determination to conserve and increase our dollar reserves through import and exchange controls. These control measures have to be complemented by increased production as an effective means of producing wealth for the nation.

In this all-important food production campaign, this Department is called upon to promote favorable conditions conducive to the return of farmers to their lands so that these may be immediately put to cultivation and productivity. To attain this end,

every assistance should be given the farmers in their efforts to till the land and to produce the food crops that the nation needs.

Under Administrative Order No. 42 dated June 17, 1946, of the President of the Philippines, to implement the National Food Production Campaign, Provincial Governors, City and Municipal Mayors are designated deputies of the Secretary of Agriculture and (Commerce) Natural Resources in the prosecution of the campaign in their respective jurisdictions.

To individual, group or community projects, including those of the school children, the local government officials are requested to extend all possible assistance in utilizing vacant private or government-owned lots and in obtaining from the local agricultural supervisors seed of quick-growing food crops such as tomato, gabi, cassava, papayas, patani, and other beans and vegetables for food production. Fruit trees should also be planted in suitable spaces on individual home lots.

In order to serve as an example of our earnestness to produce tangible and practical results from this campaign, it is urged that local government officials organize their respective personnel into a cooperative group to undertake their own vegetable and other food crops projects.

Provincial Governors are requested to transmit the contents of this circular to the Mayors in their respective provinces.

SOTERO BALUYOT
Secretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER NO. 17

February 1, 1950

DETAILING ASSISTANT CITY FISCAL OF MANILA JULIO VILLAMOR TO THE IMPORT CONTROL BOARD TEMPORARILY.

Upon the request of the Import Control Board by virtue of its resolution dated January 30, 1950, which was transmitted to this Department by the Solicitor General, Mr. Julio Villamor, Assistant City Fiscal of Manila, is hereby temporarily detailed, in addition to his regular duties, to the Import Control Office, to assist the Import Control Commissioner in the disposition of legal matters and determination of irregularities which may have been committed relative to the importation of goods with a view to taking appropriate criminal action as the facts may warrant, without additional compensation.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 18

February 3, 1950

ADVANCING THE COURT TERM IN SAN JOSE, ANTIQUE FROM THE FIRST TUESDAY OF FEBRUARY, 1950, TO FEBRUARY 3, 1950.

In the interest of the administration of justice and pursuant to the provisions of section 54 of Republic Act No. 296, last paragraph, the court term in San Jose, Antique, which by law should begin on the first Tuesday of February, 1950, is hereby advanced so as to begin on February 3, 1950.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 19

February 6, 1950

DESIGNATING JUSTICE OF THE PEACE JERONIMO CALINOG OF CAMALIGAN AND GAINZA, CAMARINES SUR, AS ACTING MUNICIPAL JUDGE OF NAGA CITY.

In the interest of the public service and pursuant to the provisions of section 75 of Republic Act 305, Mr. Jeronimo Calinog, Justice of the Peace of Camaligan and Gainza, Camarines Sur, is hereby designated Acting Municipal Judge of Naga City, in addition to his regular duties as such Justice of the peace, from February 13, 1950, and to continue only during the absence of Mr. Vicente Tuazon, the regular incumbent.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 20

February 6, 1950

AUTHORIZING CADASTRAL JUDGE MANUEL M. MEJIA, IN ADDITION TO PREVIOUS GRANT OF AUTHORITY, TO TRY ALL KINDS OF CASES AND ENTER FINAL JUDGMENTS THEREIN.

In addition to the authority granted to Cadastral Judge Manuel M. Mejia under Administrative Order No. 180 of this Department, dated November 12, 1949, he is hereby authorized to try all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 21

February 14, 1950

AUTHORIZING JUDGE-AT-LARGE VICENTE ARGUELLES TO HOLD COURT IN THE PROVINCE OF CATANDUANES

In the interest of the administration of justice and pursuant to the provisions of Section 56 of

Republic Act No. 296, the Honorable Vicente Arguelles, Judge-at-Large, is hereby authorized to hold court in the province of Catanduanes, beginning the first Tuesday of March, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRARIVE ORDER NO. 23

February 14, 1950

DESIGNATING SENIOR CLERK EULOGIO S. EUSEBIO OF THE OFFICE OF THE REGISTER OF DEEDS OF RIZAL TO ACT AS REGISTER OF DEEDS OF RIZAL UNTIL FURTHER ORDERS.

In the interest of the public service, and pursuant to the provisions of section 201 of the Administrative Code, as amended by Republic Act No. 164, Mr. Eulogio S. Eusebio, senior clerk in the office of the Register of Deeds for the Province of Rizal, is hereby designated to act as Register of Deeds for said province beginning February 20, 1950, during the absence of the regular incumbent, or until furthur orders.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 25

February 25, 1950

AUTHORIZING JUDGE-AT-LARGE DEMETRIO B. ENCARNACION TO HOLD COURT IN PASIG, RIZAL

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Demetrio B. Encarnacion, Judge-at-Large, is hereby authorized to hold court in Pasig, Rizal, during the absence on leave of Judge Manuel P. Barcelona from March 13 to 31, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 26

February 24, 1950

SETTING ASIDE THE SUSPENSION OF JUSTICE OF THE PEACE RUFINO ABUDA OF MACARTHUR AND QUINAPONDAN, SAMAR RESUMING HIS DUTIES UPON RECEIPT OF NOTICE HEREOF.

In view of the dismissal of criminal case No. 892 of the Justice of the Peace Court of Guiuan, Province of Samar, *vs.* Mr. Rufino Abuda, Justice of the Peace of MacArthur and Quinapondan, same province, Administrative Order No. 116, dated August 22, 1949, of this Department, suspending Mr. Abuda from office, is hereby set aside. He may, therefore, resume his duties as such justice of the peace immediately upon receipt of notice hereof.

Payment of Mr. Abuda's salary during the period of his suspension is hereby authoriped.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 27

February 27, 1950

AMENDING ADMINISTRATIVE ORDER NO. 12, DATED JANUARY 30, 1950

Administrative Order No. 12 of this Department, dated January 30, 1950, is hereby amended insofar as the assignment of vacation judges for the Province of Sulu and the City of Zamboanga during the months of April and May, 1950 is concerned, as follows:

For the Province of Sulu and the City of Zamboanga, Judge-at-Large Teodoro Camacho.

Judge Teodoro Camacho is also hereby authorized to hold court in Sulu and Zamboanga City during the absence on leave of Judge Pablo Villalobos from June 1, 1950 to August 31, 1950 for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Appointments confirmed by the Commission on Appointments at its meeting held on February 21, 1950:

Hon. Prospero Sanidad, Secretary of Public Works and Communications; Hon. Nicanor Roxas, Undersecretary of the Interior; Hon. Cecilio Putong, Undersecretary of Education; Hon. Jose Romero, Envoy Extraordinary and Minister Plenipotentiary; Hon. Mariano Espeleta, Consul-General; Hon. Tomas B. Morato, Colonel in the Reserve Force, AFP; Hon. Pedro M. Gimenez, Deputy Auditor General; Hon. Quintin Paredes, Jr., Associate Public Service Commissioner; Benito Pangilinan, Director of Public Schools; Venancio Trinidad, Assistant Director of Public Schools; Pascual Buenaventura, Assistant Director of Public Libraries; Antonio Maceda, Superintendent of City Schools of Manila; Hon. Gabriel R. Mañalac and Benito Pangilinan, Members of the Board on Textbooks until October 5, 1955; and Dr. Alejandro C. Baltazar, City Health Officer of Cebu City.

DEPARTMENT OF THE INTERIOR

Provincial Officials:

Hon. Meliton Rigor, designated Acting Provincial Governor of Nueva Ecija during leave of absence of Governor Juan O. Chioco, February 27, 1950.

Municipal Officials:

Porfirio Jain, appointed Vice-Mayor, and Jose Ingente, Rodrigo Mabitad, Gregorio Duali, Pedro Dacumos and Isidro Oclida, councilors of Panabo, Davao, February 2, 1950.

Alfonsa R. Valera, Francisco Cerbas, Eligio Pagaduan, Gavino Colas, Gregorio Revamonta and Angel Dora, appointed councilors of Samal, Davao, February 2, 1950.

Ruperto Somikad and Melecio Limbo, appointed councilors of Digos, Davao, February 2, 1950.

Guillermo Cagaanan and Pedro Campañano, appointed councilors of Padada, Davao, February 2, 1950.

Pedro Tañala, appointed councilors of Jaro, Leyte, February 6, 1950.

Eulogio Bernandino and Gervacio Mercadijas, appointed councilors of Agdañgan, Quezon, February 6, 1950.

Venerando Udarbe, appointed Mayor, Elpidio Tobias, Vice-Mayor, and Toribio Peneyra, Sulpicio Leanio, Rosendo Medrano and Jose Manzano, councilors of Santa Ana, Cagayan, February 13, 1950.

Leonardo Ramirez, appointed Vice-Mayor, and Juan Bruno and Estefanio Remudero, councilors of Baggao, Cagayan, February 13, 1950.

Estanislao Roble, appointed councilor of Danao, Cebu, February 13, 1950.

Juan de Leon and Serafin Gabriel, appointed councilors of San Miguel, Bulacan, February 14, 1950.

Amado de los Reyes, appointed councilor of Unisan, Quezon, February 14, 1950.

Pedro Cemanes, appointed councilor of Taft, Samar, February 16, 1950.

Severo M. Perez, appointed Vice-Mayor, and Felix Ebron, councilor of Tanauan, Batangas February 20, 1950.

Rebeco Atanoso, appointed councilor of San Dionisio, Iloilo, February 20, 1950.

Moises Villaseñor and Marcelo Repaso, appointed councilors of Burdeos, Quezon, February 20, 1950.

Silvestra A. Elemia, appointed councilor of Las Piñas, Rizal, February 20, 1950.

Pablo Uriarte, appointed Vice-Mayor, and Eusebio Maaño, councilor of Pitogo, Quezon, February 24, 1950.

Ramon Mayor, appointed councilor of Altavas, Capiz, February 28, 1950.

Ruperto Prado, appointed councilor of Batan, Capiz, February 28, 1950.

DEPARTMENT OF FINANCE

Provincial Treasurers designated Provincial Assessors in addition to their duties:

Iloilo: Ildefonso D. Jimenez; Misamis Occidental: Pascual Caoile; Negros Occidental: Pedro Encarnacion; Palawan: Fernando T. Fuentes; Romblon: Jose L. Recio.

HISTORICAL PAPERS AND DOCUMENTS

Vice-President Fernando Lopez' speech delivered at the Manila Hotel, Saturday noon, February 11, 1950, on the occasion of the "Made-in-the-Philippines Products Week" celebration:

Fellow Countrymen, my Friends:

It is a great honor for me to address this select gathering of the leading businessmen of our country—men and women who have distinguished themselves in the establishment, promotion and growth of our industry and commerce.

This is also a happy occasion for me because ever since my recent election to the Vice-Presidency, I have looked forward with eagerness and anxiety to an opportunity to meet with a representative group from our business community for the purpose of discussing mutual problems and exchanging frank and honest views on a wide-range of subjects affecting our common destiny.

Although Fate has drawn me into politics, I am, as you all know, a businessman by training and inclination. As such, I have long realized the important role that the businessman—in his own sphere—plays in the great task of economic revival and development that must necessarily be undertaken if we are to survive as a nation and enjoy the boon of liberty and independence for which our people have sacrificed so much to attain.

I can see no better evidence of the bright prospect for our economic future than your presence here today. You, and the industries and businesses that you represent, are the products of the conditions of democratic free enterprise that we have all labored in common to establish in this land. That you have prospered and grown is the best evidence that we have in this country the proper environment for economic growth and development. That you have succeeded is, of course, a tribute to your own efforts and foresight from which the entire nation draws inspiration for our economic salvation.

We are gathered here today to celebrate "Made-in-the-Philippines Products Week," a week set aside by His Excellency, the President, for the proper exaltation of, and special patronage for, economic goods produced in the Philippines. This has been a traditional annual observance ever since 1933 when the then Governor General Frank Murphy, a great friend and admirer of the Filipino people, proclaimed this special celebration for the first time to stimulate greater production and consumption of things Philippines.

The development of a sound, stable and productive economy is the goal that our government is mustering the

totality of its resources and energies to achieve. In fact, it is the objective of any government that is genuinely concerned with the welfare of its people and that is determined to create for them the amplest job opportunities, a high living standard, peace and contentment.

Our program of economic development is predicated on economic survival. Our wise economic planners, who have drawn inspiration and obtained active assistance from many among you, have formulated a program of economic reconstruction and development intended to satisfy two primary purposes, namely: one, to rebuild the economy that was destroyed or damaged by the last war; and, two, to broaden the narrow economy that is ours, to place more areas under cultivation for the satisfaction of local needs in food, shelter and clothing, to increase export of commodities for which our country, by reason of its climate and other conditions, is particularly suited, and to industrialize.

We must make as well as grow. We must have the income with which to buy not only the products of our own toil but also the manufacture of others. But we should not be content with merely being buyers. Whenever and wherever possible, we should make use of the ingenuity and resourcefulness so amply demonstrated during the period of enemy occupation to produce here the necessities of life. We should pool our resources, harness all available energy and move the wheels of industry to supplant with the products of our own sweat and toil commodities which we have heretofore bought from other countries, at a great burden to our economy. We should establish such industries as can process our native products, and present these goods to the people and to world buyers, if necessary, with the proud label, "Made in the Philippines." In this manner, we can increase opportunities for employment at reasonable wages in order that we may raise to substantial and permanently higher levels the living standards of our people and assure ourselves a steadily growing volume of real income, and effective demand for goods and services for local consumption as well as for world trade.

It is this vision of an expanded Philippine economy that has compelled the Government to take certain vigorous measures to stabilize our economic system and prevent a total dissipation of our resources before our development program can be put into effect. I refer to the import control, selective credit control and foreign exchange control that have been instituted during the past few months and which, I believe, is a subject very "popular" to you all.

I shall not dwell at length on this subject because I know that the various control measures have been explained in detail to you by men better qualified than myself to speak on this subject.

Controls are necessarily oppressive; in fact, there is no such thing as a benign control. At best, they are palliatives, not remedies, and are resorted to in an emergency or as a last recourse. I mention this fact not to cause undue alarm—because the situation does not warrant it—but in order to underscore the need of the hour. There is need for restraint, for an understanding of our economic requirements, for the subordination of self to the cause of the national welfare, and for confidence in ourselves and faith in our future. We are at the crossroads of our destiny. One way leads to ruin and disintegration; the other, to economic salvation and prosperity. There hardly seems to be any question as to our choice.

In such an atmosphere, the observance of "Made-in-the Philippines Products Week," takes on an added significance. That we have to develop our industries, is both obvious and imperative. It is the positive approach to the economic problems confronting our country.

We are, indeed, fortunate to live in a country that God has endowed with rich natural resources and potentialities. As a people, we possess the necessary talent, skill and organizational ability to make use of such resources and funnel them into channels of manufacture, trade and commerce. We should, therefore, one and all, give the necessary encouragement and stimulus to our domestic industries by patronizing products made at home. Such is a responsibility that we cannot shirk.

But while economic protectionism, which is nothing more than a manifestation of patriotism and love of country, is a universally accepted rule of national conduct, permit me to say a word on this score before I close my brief remarks today.

National protectionism is a virtue; as such it should be practised with a great deal of restraint. It should not be fanatical, but practical; it should be tempered with prudence and wise judgment.

National protectionism should not entitle a manufacturer to take unfair advantage of the consumer. Just as every right carries with it a corresponding obligation, national protectionism should inspire us to produce more, in better quality and at cheaper price. Let us not rely on emotion and expect our countrymen to buy our goods simply because they are ours. National protectionism should encourage us therefore, to produce the best, and should instill in us great pride in the produce of our toil.

Lastly, in encouraging the growth and development of local industries let us not lose sight of our national objective. As a matter of government policy we have invited and will continue to invite friendly foreign capital to invest in our economic development program and to work with us in the exploitation of our resources. This is necessary to finance our investment requirements for

industrialization. I, for one, believe in the wisdom of such policy because we shall not only profit from such investments but it shall enable Filipino labor to acquire valuable technical knowledge and "know-how." Once such top industries are established here, they will in effect be Philippine industries. As His Excellency, President Elpidio Quirino stated at a similar meeting last year, such industries will have no foreign nationality—in so far as the benefits of national protectionism is concerned. Once an industry is established here, it is a local industry whose growth, prosperity and stability will be to our lasting benefit and interest.

My friends: The basic problems confronting our country and people today are economic. Their solution, therefore, lies in the proper application of economic remedies. You who are at the helm of business and trade activity in the Philippines are charged with a grave duty and a solemn obligation to help your government tide over the difficult times ahead. I appeal to you to work with your government and give of the best of your talents and energies to create in this country those conditions in our livelihood that will make for contentment for our people.

I thank you.

Extemporaneous speech delivered by President Elpidio Quirino at the Manila International Airport upon his arrival from the United States, February 11, 1950:

My Dear Friends and Fellow Countrymen:

I thank you all for coming to receive me at the airport. Once again you have gone out of your way to show a kindly consideration to your President. Indeed, we almost did not see each other again. The ailment that compelled me to leave the country has nearly snatched me away from you. Thank God, He heeded your prayers and those of friends across the seas that my life may be preserved so that I may continue serving your interests. The distance, the longings, the sufferings and the apprehension of fatal danger have a wonderful effect upon the mind of one who, 10,000 miles away, tries always to remember his responsibilities and obligations to his country. They have caused a strange transformation in me, making me not only closer but more devoted to my country.

After going through the greatest ordeal in my life, I am happy with the knowledge that I am more fit physically and mentally, and shall I not also say, spiritually, to serve my country in every way.

Again I thank you all from the deepest recesses of my soul for your sincere good wishes and prayers that I may thus return to you. I am more determined than ever to

devote the remaining portion of my years to your welfare and to the permanent interest of our country.

I come home more confident that I can discharge my duties very much better than if I had not left the country. My 34 days of absence from your midst has given me the greatest opportunity to study more intimately, even from afar, the situation in which our Republic is now placed under the precarious circumstances prevailing in the world, particularly around us.

I have had two occasions, first at tea at the Blair House and another at a conference at the White House, to review with President Truman the various phases of the established relationship between our country and the United States. It was a great opportunity not only to renew old friendships but to make mutual reiteration of loyalty and understanding between our two peoples. I have received assurances of America's continued concern for our welfare and of effective support in our efforts to secure our economic stability and to strengthen our national security.

I am therefore more encouraged and confident than ever before in guiding the course of this nation for the next four years. I am sure we will not fail in our endeavors if we but concentrate our attention with unity of purpose in the establishment of a life of order, of substance and of security.

Yes, I come home with a new lease of life and with a renewed faith in our future. And I assure you that you have a "renewed" President in many respects. At this, my grateful moment, I ask you to renew with me the faith and confidence in one another.

I thank you.

Extemporaneous remarks of President Elpidio Quirino, opening the 1950 National Fund Campaign of the PNRC in Malacañan Palace, Tuesday, February 14, 1950:

Ladies and Gentlemen, and Friends:

Once again, as is customary every year, the symbol of the Red Cross, the undisputed emblem of charity, dominates the atmosphere of this palace, and for that matter of the whole nation.

As an official organization organized by law, it is not only vital to the moral support of the Chief Executive. It counts upon the official support and, if necessary, the sacrifices of the whole complement of the Government in order that its noble mission to our country may be realized. I therefore accepted the invitation of the chairman if this campaign to open the drive even if I was not sure that I may be with you this afternoon, uncertain as I was about my presence in the Philippines on this occasion. And, even if I were absent, I would have exerted the

same effort to have to enjoin every citizen, every foreigner, and every inhabitant of this country to support this campaign because the Red Cross needs the necessary funds to implement its high objectives, its high mission.

Everyone has always regarded the symbol not only with gratitude but with respect and no controversy ever arises regarding its movements and activities and the accomplishments in its mission because the activities undertaken by this great humanitarian institution are but a duplicate, a replica of what is symbolized by its prototype, the Cross of Christ.

From this occasion, my friends, I shall not tarry long nor shall I employ more time for the enlightenment of our citizenry and of the people whom we call upon to contribute their utmost to the success of this drive. Everybody knows, because everybody has realized the great work the Red Cross, our own Red Cross, has accomplished during barely three or four years of its organization as our own national instrumentality to carry out the mission of the Red Cross all over the world.

I have been preaching austerity of late. But this should not apply to the Red Cross because there is no austerity in charity, in mercy, or in compassion nor in our love for our fellow men. I invite each and everyone of you to give the most that you can, especially during these days of strife and stress when our Government is in a difficult financial, economic position and there is great suffering on the part of our people in these times of emergency, whether they are victims of natural catastrophes or of adversity or the follies of man. We must be ready to give effective succor to the suffering people of this country.

I therefore believe that I am discharging one of my most noble duties as Chief Executive in asking each and everyone of you throughout the length and breadth of this land to contribute the last centavo that you have saved. If you cannot make effective your contribution in cash, I am sure the Red Cross can accept your promise to pay. Credit will be honored by this institution and I know that if you don't have the money today, tomorrow, when the import control or the exchange control or the other financial difficulties that are psychologically bothering the conscience of our people today, the effects of the so called temporary ailments, have subsided, I am very sure each and everyone of you will be able to contribute at least ₱10 or ₱20 each, or every inhabitant. I am going to make my own contribution the most that I can personally make out of my salary. I will give ₱1,000. [*Applause.*] Millionaires, businessmen, professionals, and even racketeers can commend this campaign. I declare open the drive for this year. Thank you. [*Applause.*]

The President's Sixteenth Monthly Radio Chat, February 15, 1950:

My Fellow Countrymen:

From my sick-bed at the Johns Hopkins Hospital in Baltimore, Maryland, I broadcast my last chat with you, It was on the eve of my operation which required confinement therein for exactly the same number of days as the late President Quezon's confinement for a similar operation fifteen years ago. Strange as it may seem, there were other coincidences in President Quezon's confinement and mine. We were operated on in the same hospital and both operations were successful. I was assigned the same room that President Quezon occupied and which henceforth the hospital administration called the "Presidential Suite."

Unlike President Quezon, however, I did not prepare my last will and testament before submitting to the operation. Unaware of the great danger, I was confident that God, heeding the prayers of my good people at home and those of friends across the seas, would pull me safely through. Besides, before I was placed under the scalpel, my surgeon, Doctor Colston, assured me that five days thereafter, I could broadcast my message on the State of the Nation to the Philippine Congress in Manila. Sure enough, three days after the operation, I was able to sit up, on the fourth day I worked on the message, and on the fifth I broadcast it from my sick-bed.

In reviewing now the various incidents from which I derived great lessons in life, I remember three events which stands out as important landmarks in my career. The first of these was my incarceration at Fort Santiago by the Japanese in 1943, from which experience I learned for the first time to appreciate fully the value of individual liberty. The second was when I lost my wife, three children and several members of my family during the battle for the liberation of Manila in 1945, as a consequence of which the lesson of submission to God's will and the healing power of the Lord's name was brought home to me. The third was when I experienced the gravest personal crisis in my life and barely escaped death in submitting myself to the operation at the Johns Hopkins hospital, which last event taught me how precious life is and how important that it be dedicated to great and worthwhile ends.

Incidents such as these in the life of man have their counterparts in the life of a nation. We who, as a people, have struggled long and hard for liberty, never fully knew how precious this boon is until we passed through the long night of the Japanese occupation and had to fight for our very existence as a nation. Peoples, like individuals, learn to value more and to enjoy better the fruits of their sacrifices only after going through a series of na-

tional tragedies. When they emerge triumphant over these tragedies, they become more confident of their future because of the trying experiences they have undergone.

Similarly, in a period of peaceful reconstruction, we cannot expect the road to be always smooth and pleasant. The road is often dark, bumpy and even perilous. Many a time it entails suffering and demands the sacrifice of many lives. The restrictive measures we have had to employ in order to stabilize our economy, such as the import control, the exchange control and other measures which are calculated to strengthen our ailing economy, are some of the sacrifices we have to undergo before the salutary effects of our reconstruction program can be properly evaluated. It takes time, of course, to appreciate and enjoy the beneficial results of such measures. But the life of a nation is not measured in terms of days, months, or even years. It is measured by generations and even by centuries. Our young Republic cannot be an exception to the laws governing the birth and growth of a national society. We must prepare ourselves for the difficult problems that are common to all peoples in the period of growing pains. Patriotism imposes upon us the obligation to be patient and determined, if we are to realize our mission of establishing sound and enduring democratic institutions in our country.

The most trying period in our peacetime national history has just set in. We have summon the last resources of our national sinew, genius and vision to meet the tremendous difficulties ahead. This is no time to waste our precious moments in complaining, moaning, or even groaning against or under apparently insuperable odds. Such attitudes cannot help to advance our constructive efforts to make secure our national existence. In a period of reconstruction such as the present, when men throughout the world are working hard not only to recover from the great devastation brought by the last war, but to rise anew and build better than before in the face of possibility more serious situations in the future, it is necessary that we as a people, each and all, pool our individual efforts and together harness our collective strength to the tasks of reconstruction and development.

I therefore enjoin you all to get busy, to sharpen your minds and fortify your souls as you bend your muscles to the one task which is more important than any other—the task of production and yet more production. We are racing with time, and we cannot afford to dilly-dally. Inertia, stagnation, discouragement and lack of confidence in our future are our greatest enemies. We must drive them away from our homes, from our farms, from our factories, from the fair face of this land of ours. The responsibilities of this generation, of this adminis-

tration, of us all individually and collectively, are much too serious to be taken lightly. I urge each and every inhabitant of this country to work harder in the common interest to stand up valiantly together in the face of the odds that confront this nation. In this way, we shall succeed in our present endeavors, even as we have always succeeded in the preceding stages of our national development. We must rule out failure as an alternative.

My Countrymen: I have never been more encouraged in guiding the course of this nation than after my last trip to the United States, where I could see from afar, objectively from a detached vantage-point, our national problems in their varied aspects and proper perspective. I had a splendid occasion to discuss with the powers-that-be in Washington the matter of our special relationship with the United States, the great country with whose destiny ours is so closely linked.

I consider it a rare opportunity to have been able to discuss with President Truman various matters relating to our economic and political, and even military security, and I am happy to report that America is still our great friend and ally, that she is proud of our achievements, that she has confidence in our continued existence as a free and prosperous nation. But we cannot, and we shall never, depend solely on the good wishes of our friends and benefactors. Our future—our destiny—is in our hands to make. To safeguard and advance it we must labor hard, fight hard, and be ready and willing to undergo any sacrifices. There is no reason why a self-relying and self-respecting nation like ours should fail in its mission, considering the abundant resources in material, intellect and vision that this country possesses.

Various agencies of the United States Government—economic and financial missions sent by world banking and financial institutions, congressional, committees and special investigators, who have made a general survey of conditions in the Philippines—all are of the same opinion that, basically, the economy of this country is strong and sound. On the other hand, we have the assurance that we would not be alone in this part of the globe should any threat endanger our democratic institutions or our national security. Under these circumstances, my friends, why should not you and I have faith and confidence in our future?

I recall to you our recent wartime experiences as a conquered and oppressed people only to convince you and the whole world that no sacrifices which we may be called upon to make today and tomorrow can be half as severe as those we endured during the Japanese occupation. Our nation survived, thank God, under a system which crippled our productive energies, completely cut off

our imports and enabled the enemy to loot wantonly our resources and to confiscate for their own use a substantial part of our production. Some will say that we made these sacrifices under the iron necessities of war and for the sake of the supreme ideal of liberty, but I say to you that the peacetime measures which we have taken are necessitated no less by the iron law of survival and by the need of preserving freedom and democracy in our land.

My fellow countrymen, let us draw fresh hope and optimism from the favorable position in which we stand in comparison with the other nations of the world, new or old. My last words to you, therefore, at this moment are: optimism and confidence, work and endurance. And as they say in Spanish, "A mal tiempo buena cara."

I thank you.

DECISIONS OF THE SUPREME COURT

[No. L-1534. October 25, 1948]

RICARDO SUMMERS, petitioner, *vs.* ROMAN OZAETA, Secretary of Justice, and MANUEL AGREGADO, Auditor General, respondents.

1. PUBLIC OFFICERS; JUDGES OF COURTS OF FIRST INSTANCE; CONSTITUTIONAL TENURE OF OFFICE; WAIVABLE.—That said right is waivable and should be construed without prejudice to the legal effects of abandonment in proper cases.
2. ID.; ID.; ACCEPTANCE OF POSITION AS JUDGE-AT-LARGE; WAIVER TO HOLD FORMER POSITION OF CADASTRAL JUDGE.—We do not hesitate to rule that petitioner's voluntary acceptance of the position of judge-at-large consequent upon his taking of the oath of office on February 16, 1946, amounted to a waiver of his right to hold the position of cadastral judge during the term fixed and guaranteed by the Constitution.
3. ID.; ID.; ACCEPTANCE OF NEW OFFICE AS JUDGE-AT-LARGE AS ABANDONMENT OF OFFICE OF CADASTRAL JUDGE.—In Zandueta *vs.* De la Costa (38 Off. Gaz., 2352), wherein it was held that "when a judge of first instance, presiding over a branch of a Court of First Instance of a judicial district by virtue of a legal and valid appointment, accepts another appointment to preside over the same branch of the same Court of First Instance, in addition to another court of the same category, both of which belong to a new judicial district formed by the addition of another Court of First Instance to the old one, enters into the discharge of the functions of his new office and receives the corresponding salary, he abandons his old office and cannot claim to be entitled to repossess it or question the constitutionality of the law by virtue of which his new appointment has been issued; and, said new appointment having been disapproved by the Commission on Appointments of the National Assembly, neither can he claim to continue occupying the office conferred upon him by said new appointment, having *ipso jure* ceased in the discharge of the functions thereof."
4. ID.; ID.; "AD INTERIM" APPOINTMENT, NATURE OF; DISTINGUISHED FROM ACTING APPOINTMENT.—An *ad interim* appointment is one made in pursuance of paragraph (4), section 10, Article VII, of the Constitution, which provides that "the President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress." It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. An *ad interim* appointment is disapproved certainly for a reason other than that its provisional period has expired. Said appointment is of course distinguishable from an "acting" appointment which is merely temporary, good until another permanent appointment is issued.
5. ID.; ID.; HASTY ACCEPTANCE OF "AD INTERIM" APPOINTMENT IS NOT FAVORED; TO AWAIT CONFIRMATION IS PREFERABLE.—A hasty acceptance on the part of an *ad interim* appointee, in the anxiety to enjoy either the higher honor or better

material advantages of a second office, may lead to seemingly unfair consequences for which the appointing power should not be blamed. While in the ordinary course of things, an appointee certainly has the right to rely on his record and expect the approval of his appointment, it is nevertheless the better part of wisdom for one always to adopt the surer method which will, furthermore, protect him against any design, intentional or otherwise, to oust him from an office the tenure of which is fixed by the Constitution.

6. ID.; WHEN INCOMPATIBILITY OF OFFICES EXISTS.—Incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other (42 Am. Jur., section 70, p. 936), or whenever one is subordinate to the other in some of its important and principal duties, and subject in some degree to its revisory power.

7. COURTS; POWERS; FORMULATION OF GENERAL DEFINITION IS AVOIDED.—Courts are prone to avoid the formulation of a general definition and content themselves with the discussion of specific cases and particular facts, and that it is difficult to find one sufficiently clear and comprehensive to be decisive in every case.

8. PUBLIC OFFICERS; WHEN INCOMPATIBILITY TO VACATE FIRST OFFICE EXISTS.—The incompatibility which shall operate to vacate the first office exists where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both. (Mechem, Pub. Off., sec. 422 and cases.)

Per PERFECTO, *J*, dissenting:

9. GUARANTEE OF JUDICIAL INDEPENDENCE.—Judicial inamovability or permanent tenure of office has long been considered as an indispensable guarantee to keep judicial independence, the cornerstone of all systems of effective administration of justice.

10. EXACTING DEMANDS.—There is perhaps no other government position wherein there is more demand for equanimity, prudence, fortitude and courage, than that of a judge. He has to administer justice without fear or favor, to friends and foes alike. More often than not, he will have to decide against the powerful.

11. NOT A WAIVER.—The fact that a cadastral judge accepts and assumes the position of a judge-at-large, upon an *ad interim* appointment, does not constitute a waiver of the right to continue holding the position of cadastral judge in accordance with the doctrine laid down by the Supreme Court in Santiago *vs.* Agustin (46 Phil., 14).

12. WHAT CONSTITUTES WAIVER OR ABANDONMENT OF OFFICE.—A public office may become vacant by abandonment. But the abandonment must be total, and under such circumstances as clearly to indicate absolute relinquishment. Temporary absence is not sufficient.

13. WRONG DECISION.—The decision in the Zandueta case (38 Off. Gaz., 2352) cannot stand analysis. It is based on wrong premises and ignores the principle upon which the Santiago case was decided.

14. CHANGE OF SALARY, NOT OF OFFICE.—The appointment of a cadastral judge to that of a judge-at-large does not change the nature of the position of the appointee, and entitles him only to an increase of salary. The jurisdiction and function of both positions are in law and in fact the same, the difference of name only serves to indicate a difference of salary.

15. CASES OF JUDGES WHO OCCUPIED EXECUTIVE POSITIONS.—Several cases are cited in the opinion of judges who, notwithstanding having occupied and performed the duties of a position in the Executive Department, have not lost for that reason their judgeships.

16. PUBLIC FAITH AND CONFIDENCE.—They cannot be kept alive with a token democracy. Democratic structural skeleton is not enough. The people will not be satisfied with anything less than true democracy in action. It is useless to panegyrize democracy when it is sabotaged by the double-dealing of men on whose shoulders weighs the responsibility of making it a success.

ORIGINAL ACTION in the Supreme Court. Mandamus.

The facts are stated in the opinion of the court.

The petitioner in his own behalf.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Francisco Carreon* for respondents.

PARÁS, *J.:*

Prior to February 16, 1946, the petitioner was a cadastral judge. On said date he qualified for and assumed the position of judge-at-large of first instance by taking the corresponding oath of office before the Secretary of Justice, the petitioner having received an *ad interim* appointment on February 11, 1946. On July 9, 1946, petitioner's *ad interim* appointment was disapproved by the Commission on Appointments, as a result of which the respondent Secretary of Justice duly informed the petitioner that the latter was thereupon separated from the service. The petitioner seemed to have acquiesced in such separation, at least in so far as the same may be inferred from the fact that, thereafter and until the present action was instituted on July 11, 1947, his efforts were limited to the task of being reappointed, although in the letter dated November 22, 1946, written by Senator Vicente Sotto to the Secretary of Justice, and requesting the reappointment of the petitioner to one of the vacancies in the Courts of First Instance, it was argued that the petitioner did not cease to be a cadastral judge. At any rate, the petitioner does not pretend that he has ever rendered service as cadastral judge or received any of its emoluments subsequent to the rejection of his *ad interim* appointment by the Commission on Appointments.

It is now argued by the petitioner that, under section 9, Article VIII, of the Constitution, he is entitled to continue as cadastral judge during good behavior until he reaches the age of seventy years or becomes incapacitated to discharge the duties of said office; that the positions of cadastral judge and judge-at-large are not incompatible and that, therefore, by the acceptance of the latter office he did not cease to be a cadastral judge, especially where his *ad interim* appointment was disapproved by the Commission on Appointments.

There can be no doubt about the constitutional right of members of the Supreme Court and judges of inferior courts to hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. We believe, however, as already pointed out in the concurring opinion of Justices Pablo, Perfecto and Hilado in Tavora *vs.* Gavina and Arciaga, L–1257, October 30, 1947, 45 Off. Gaz., 1769, 1776, that said right is waivable and should be construed without prejudice to the legal effects of abandonment in proper cases.

It is alleged that the President, on his own initiative and without the knowledge or consent of the petitioner, appointed the latter *ad interim* to the position of judge-at-large on February 11, 1946. This may be taken for granted. Yet the fact remains that the petitioner was at complete liberty to decide whether he would honor the offer with acceptance or decline the same politely. Indeed, it is not here contended that the petitioner was compelled in any way to qualify for and assume the new position. In Zandueta *vs.* De la Costa, 38 Off. Gaz., 2358, this Court emphasized that "the petitioner was free to accept or not the *ad interim* appointment issued by the President of the Commonwealth in his favor, in accordance with said Commonwealth Act No. 145. Nothing or nobody compelled him to do so. While the office of judge of first instance is of public interest, being one of the means employed by the Government to carry out one of its purposes, which is the administration of justice, considering the organization of the courts of justice in the Philippines and the creation of the positions of judge-at-large or substitutes, the temporary disability of a judge may be immediately remedied without detriment to the smooth running of the judicial machinery. If the petitioner believed, as he now seems to believe, that Commonwealth Act No. 145 is unconstitutional, he should have refused to accept the appointment offered him or, at least, he should have accepted it with reservation, had he believed that his duty of obedience to the laws compelled him to do so, and afterwards resort to the power entrusted with the final determination of the question whether a law is unconstitutional or not."

We do not hesitate to rule that petitioner's voluntary acceptance of the position of judge-at-large consequent upon his taking of the oath of office on February 16, 1946, amounted to a waiver of his right to hold the position of cadastral judge during the term fixed and guaranteed by the Constitution. But it is maintained that an *ad interim* appointment is merely temporary and the petitioner cannot be said to have vacated the office of cadastral judge in view of the rejection of said appointment by

the Commission on Appointments. This point has to be resolved adversely to the petitioner, if we are to be consistent with the decision in Zandueta *vs.* De la Costa, *supra,* wherein it was held that "when a judge of first instance, presiding over a branch of a Court of First Instance of a judicial district by virtue of a legal and valid appointment, accepts another appointment to preside over the same branch of the same Court of First Instance, in addition to another court of the same category, both of which belong to a new judicial district formed by the addition of another Court of First Instance to the old one, enters into the discharge of the functions of his new office and receives the corresponding salary, he abandons his old office and cannot claim to be entitled to repossess it or question the constitutionality of the law by virtue of which his new appointment has been issued; and, said new appointment having been disapproved by the Commission on Appointments of the National Assembly, neither can he claim to continue occupying the office conferred upon him by said new appointment, having *ipso jure* ceased in the discharge of the functions thereof."

Moreover, an *ad interim* appointment is one made in pursuance of paragraph (4), section 10, Article VII, of the Constitution, which provides that "the President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress." It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. An *ad interim* appointment is disapproved certainly for a reason other than that its provisional period has expired. Said appointment is of course distinguishable from an "acting" appointment which is merely temporary, good until another permanent appointment is issued. (Austria *vs.* Amante, L-959, January 9, 1948, 45 Off. Gaz., 2809.) Thus, the decision in Santiago *vs.* Agustin, 46 Phil. 1, cannot be invoked by the petitioner because Santiago, while being a member of the municipal board of Manila, was designated only "Acting Mayor" and this Court held that he did not thereby vacate his first office. Indeed, the distinction between an acting designation and a permanent appointment may be gathered from the following passage of the decision: "Mr. Santiago took the oath of office and qualified for the position of Acting Mayor of the City of Manila. He indicated to the Municipal Board his intention to fill the new office temporarily and then return to his position as member of the Municipal Board. Mr. Santiago never took oath of office as Mayor of the City of Manila. He never qualified for the office of Mayor. He never accepted

the office of Mayor. He did not at any time disclose an intention to abandon the office of member of the Municipal Board. There was no resignation, express or implied, from the latter office."

In the case at bar, the petitioner accepted and qualified for the position of judge-at-large by taking the oath of office of judge-at-large, and not merely of an "acting" judge-at-large. He cannot argue that said acceptance was conditioned upon the approval of the appointment by the Commission on Appointments, for, as stated in Zandueta *vs.* De la Costa, *supra,* the petitioner "knew, or at least he should know, that his *ad interim* appointment was subject to the approval of the Commission on Appointments of the National Assembly and that if said commission were to disapprove the same, it would become ineffective and he would cease discharging the office."

In a situation faced by the petitioner, the safer course to follow would have been for him to await the confirmation of the *ad interim* appointment before qualifying for and assuming the position of judge-at-large. A hasty acceptance on the part of an *ad interim* appointee, in the anxiety to enjoy either the higher honor or better material advantages of a second office, may lead to seemingly unfair consequences for which the appointing power should not be blamed. While in the ordinary course of things, an appointee certainly has the right to rely on his record and expect the approval of his appointment, it is nevertheless the better part of wisdom for one always to adopt the surer method which will, furthermore, protect him against any design, intentional or otherwise, to oust him from an office the tenure of which is fixed by the Constitution.

The petitioner cannot seek refuge in the general principle that in order that the acceptance of a second office may be held as amounting to a vacation of the first, the two offices must be incompatible. Petitioner's line of reasoning is that the positions of cadastral judge and judge-at-large are not incompatible because the rank, duties, powers and privileges of both do not conflict or are not inconsistent with each other, and one is not inferior or subordinate to the other, but that, on the contrary, said offices have similar rank, duties, powers and privileges in accordance with Commonwealth Act No. 504 which provides that cadastral judges "shall be paid a salary of eight thousand four hundred pesos per annum each, and shall have the same rank, powers and privileges enjoyed by and granted to judges of first instance" (section 1), and Executive Order No. 395, dated December 24, 1941, which provides that "all Judges appointed under the provisions of Commonwealth Act No. 504 (Cadastral) shall henceforth have general jurisdiction

throughout the Philippines to try and determine all cases cognizable originally or on appeal by the Courts of First Instance." For our purposes, we would accept the comparison made by the petitioner and admit that there are judicial pronouncements to the effect that incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other (42 Am. Jur., section 70, p. 936), or whenever one is subordinate to the other in some of its important and principal duties, and subject in some degree to its revisory power (*id.*, section 71, p. 937). It is noteworthy, however, that the courts are prone to avoid the formulation of a general definition and content themselves with the discussion of specific cases and particular facts, and that it is difficult to find one sufficiently clear and comprehensive to be decisive in every case. (*Id.*, section 70, p. 935.)

Under the comparison presented by the petitioner, the situation before us is undoubtedly not one wherein he may appropriately hold two compatible offices at one time such, for instance, as the positions of town recorder and county and probate judge (State *ex rel.* Murphy *vs.* Townsend, 79 S. W., 782), but one wherein he cannot legally hold two offices of similar category at the same time, like two positions of judge of first instance. At least, the petitioner does not contend that he can simultaneously occupy the position of cadastral judge and the office of judge-at-large, for this would of course be clearly against public policy. The law has created a fixed number of cadastral judges (Republic Act No. 156 and Executive Order No. 94, at ₱8,400 per annum each), and a fixed number of judges-at-large (Republic Act No. 156 and Executive Order No. 94, at ₱9,000 per annum each), and considerations of public interest must have been the basis therefor. If the petitioner can be a cadastral judge and a judge-at-large at the same time, the judicial positions as specified and created by law will be diminished by one. Authority in support of our proposition is not wanting. In State *vs* Jones, 150 Wis., 572, 110 N. W., 431, it was held: "That relator in a contest by quo warranto for the office of police justice of the city of Watertown was held to have no right to that office, because at the time he was holding the office of justice of the peace in the same city. The court said: 'We consider that the two offices are clearly incompatible with each other, and that one person cannot and should not hold both of them at the same time. In the plainest terms the charter gives the city four judicial officers of the grade of justice of the peace while, if the relator could make good his right to the office of police justice it would, in

fact, have but three.' This is a strong and authoritative declaration of public policy and it is said elsewhere that the incompatibility 'which shall operate to vacate the first office exists where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both.' (Mechem, Pub. Off., section 422 and cases.) Preliminary examinations in criminal cases may be held before a justice of the peace, county judge, or court commissioner. Chapter 195, St. 1898. The consolidation in one person of the offices of county judge and justice of the peace diminishes the number of examining magistrates by one." And in State *ex rel.* Crawford *vs.* Anderson, 155 Iowa, 271, 136 N. W., 128, the same rule was stressed: "It is apparent from these several provisons of the law that the lawmaking power considered it for the public good and convenience to have three judicial officers in every township containing within its geographical limits an incorporated city, or town, and that in criminal prosecutions under the statute, these officers should have the same jurisdiction. And if this be true, can this plain purpose be thwarted by permitting one man to hold two of these offices? We think not, because the two offices are, in our judgment, incompatible when viewed in the light of the public policy expressed in the statutes creating them and defining their powers and duties. To hold otherwise would be to say that, in certain instances, there should be but two magistrates in the township, and it would then follow that other provisions of the statute would become wholly without force and effect."

It becomes unnecessary to determine whether petitioner's acts after he was notified by the Secretary of Justice about his separation from the service, constitute an implied acquiescence therein or an abandonment of the position of cadastral judge.

The petition will be, as the same is hereby, dismissed without costs. So ordered.

Moran, C. J., Pablo, Bengzon, Tuason, and *Montemayor, JJ.,* concur.

Mr. Justice Feria has reserved the right to prepare a dissenting opinion.

PERFECTO, *J.,* dissenting:

The present litigation calls for the interpretation, application, and enforcement of the first clause of section 9 of Article VIII of the Constitution which reads as follows:

> "The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. * * *"

The provision is founded on the age-long conviction that judicial inamovability or permanent tenure of office for judges is an indispensable condition to keep judicial independence, the cornerstone of systems of administration capable of rendering true justice, without fear or favor.

While the administration of justice is not entrusted to angels or supernatural persons but to human beings—which is unavoidable while the nature of things continue to be as it is,—we have to reckon not only with human qualities and virtues but also with human failings and weaknesses. The human desire to hold and keep an official position of power and honor, offering economic security and opportunity, through public service, to earn the good will of the people is general.

There is perhaps no other government position wherein there is more demand for equanimity, prudence, fortitude and courage, than that of a judge. He is to be impartial. He has to administer justice without fear or favor. He cannot betray his duties to please his friends or take revenge against or surrender to his enemies. More often than not, he will have to decide against the powerful in government, in the world of finance, in the industrial field, in religion, in politics, in labor, in the army, in other armed bodies, or any other social cross-section. He must have to muster the necessary courage never to shirk his responsibility under any circumstance against odds, regardless of who are the parties affected favorably or unfavorably. To have him perform his official functions, which may affect all the rights of human beings, their life or death, their happiness or doom, it has been thought wise to guarantee for him a permanent tenure of office, so as to preclude the possibility of compelling him to bargain for his continuance in office. Although that guarantee would not make the judiciary venal proof, it will offer to the average judge that security in office that will allow him to face unperturbed the machinations of intrigue, the insidious approaches and cajoling of any evil influence, the bullying of the powerful. Such is the reason for the constitutional provision above quoted.

The guarantee therein embodied, to be really effective, should be interpreted and applied with the constitutional purpose always in mind.

For several years prior to February 16, 1946, petitioner was a cadastral judge. On said date, he assumed the position of judge-at-large of first instance upon an *ad interim* appointment issued on February 11, 1946.

On July 9, 1946, said appointment was disapproved by the Commission on Appointments. The Secretary of Justice informed petitioner that he was separated from the service.

Within a year, petitioner filed with us a petition wherein he raised the question as to whether or not he retains the position of cadastral judge, seeking the protection of section 9 of Article VIII of the Constitution.

The controversy is narrowed down to whether or not petitioner's assuming the position of judge-at-large in virtue of the *ad interim* appointment dated February 11, 1946, had the effect of depriving him of his position as cadastral judge.

The Court is divided on this question. One side maintains that the fact that petitioner accepted the position of judge-at-large and took, therefore, the corresponding oath of office on February 16, 1946, amounted to a waiver of his right to hold the position of cadastral judge during the term fixed and guaranteed by the Constitution. We hold a contrary position, which is fully supported by the decision of this very Supreme Court in the case of Santiago *vs.* Agustin (46 Phil., 14).

Geronimo Santiago was elected member of the Municipal Board of Manila during the elections held on June 6, 1922. He took possession of his office on October 16, 1922. Sometime later, he was chosen President of the Municipal Board.

The position of Mayor of Manila was vacant. On November 17, 1923, Governor General Leonard Wood designated him as Acting Mayor of Manila until further notice. On the same day, he took the oath of office as Acting Mayor and entered upon the performance of the duties of the office.

On November 19, 1923, Governor General Wood issued an *ad interim* appointment to Geronimo Santiago as Mayor of Manila, effective as of November 17, 1923 and submitted the appointment to the Senate for confirmation. On December 14, 1923, the Senate disapproved the appointment.

On December 16, 1923, Geronimo Santiago reassumed the office of member of the Municipal Board. On June 1, 1924, the Court of First Instance of Manila issued a preliminary injunction restraining Santiago from exercising his powers and discharging his duties as member of the Municipal Board. On June 7, 1924, while the preliminary injunction was enforced, Governor General Wood named Segundo Agustin in the place and stead of Geronimo Santiago to hold the office of member of the Municipal Board. The appointment was issued *ad interim* pending final action of the courts as to the legality of Santiago's incumbency. Agustin entered upon the performance of the duties of his office. On June 7, 1924, the preliminary injunction was lifted, but Agustin remained in and Santiago remained out of the office of member of the Municipal Board.

Santiago made demand upon Agustin for the office, but Agustin refused to give it up. Agustin invoked section 2448 of the Administrative Code which provides that "No city officer (of the City of Manila) shall hold more than one office unless expressly so provided by law" and the well settled rule of the common law that he who, while occupying one office, accepts another incompatible with the first, *ipso facto* vacates the first office and his title is thereby terminated without any other act or proceeding (Mechem on Public Officers, section 420 *et seq.*).

The Supreme Court said: "A public office may also become vacant by abandonment. But in order to constitute an abandonment of office, it must be total, and under such circumstances as clearly to indicate an absolute relinquishment. Temporary absence is not sufficient. Instead, there must be an intention, actual or imputed, to abondon the office (Attorney General *vs.* Maybury, [1905], 141 Mich., 31; State *vs.* Huff [1909], 172 Ind., 1.)

Applying the above principles to the case of Geronimo Santiago this Court said: "He did not at any time disclose an intention to abandon the office of member of the Municipal Board. There was no resignation, express or implied, from the latter office" and he was never actually Mayor of the City of Manila.

No one may reasonably dispute that the position of Mayor of Manila, *ad interim* appointment to which was accepted by Geronimo Santiago, is incompatible with the office of member of the Municipal Board and with that of the President of the Municipal Board which Geronimo Santiago was occupying at the time he took the oath of office and entered upon the performance of his duties as Mayor of Manila. If the Senate confirmed his *ad interim* appointment of November 19, 1923, no one would have questioned that he would have *ipso facto* vacated his position as member of the Municipal Board.

We are of the opinion that there is no reasonable person who can find any substantial difference between the Santiago case and that of petitioner's.

The argument that the decision in the Santiago case cannot be invoked by petitioner because Santiago was designated only as Acting Mayor is not fair, because it is based on a partial presentation of facts, which ignores the fact that, on November 19, 1923, Governor General Wood issued in favor of Santiago an *ad interim* appointment which was submitted to the Senate for confirmation, and that appointment completely superseded and wiped out from the scene the designation as Acting Mayor.

Petitioner's *ad interim* appointment as judge-at-large is the same as Santiago's *ad interim* appointment as

Mayor, and both have been equally disapproved. Referring to said *ad interim* appointment of Santiago, the Supreme Court said that Governor General Wood "tried to appoint Mr. Santiago as Mayor of the City of Manila, but that appointment was not complete due to the failure of confirmation by the Philippine Senate." There is no reason at all why the same pronouncement of lack of completeness may not be applied to petitioner's *ad interim* appointment as judge-at-large which was disapproved by the Commission on Appointments. Undoubtedly, because of incompleteness, the Supreme Court decided in favor of Santiago's retention of his position as member of the Municipal Board. The same reasoning, if judicial consistency has any meaning, should be applied to petitioner. The rule which was good in favor of Santiago should be good for petitioner, unless this Supreme Court should apply double legal standards, one for predilects and another for outcasts.

The best argument that may be adduced against petitioner is the decision in the Zandueta case (38 Off. Gaz., 2352), but said decision cannot stand analysis.

On June 2, 1936, Francisco Zandueta was appointed judge of first instance to preside over Branch 5 of the Court of First Instance of Manila. This appointment was approved by the Commission on Appointments on September 8, 1936.

Manila was then designated as the 9th Judicial District.

On November 7, 1936, when Commonwealth Act No. 145, on judicial reorganization, went into effect, *ad interim* appointment was issued to Zandueta to preside over the Court of First Instance of Manila and Palawan, which formed part of the 4th Judicial District. Because the Commission on Appointments failed to act on said appointment, on November 20, 1937, a second *ad interim* appointment was issued, and Zandueta took the oath of office on November 22, 1937. On May 19, 1938, the Commission on Appointments disapproved the appointment.

This Court in a decision promulgated on November 28, 1938, declared that Zandueta ceased to be judge of first instance, having lost his position to which he was appointed on June 2, 1936, for having accepted the appointment of November 20, 1937, the one turned down by the Commission on Appointments, upon the theory that he abandoned the position to which he was appointed on June 2, 1936, and the presumption of abandonment is based upon the theory of incompatibility between said position and that which was the subject of the *ad interim* appointment of November 20, 1937. The reason adduced to show incompatibility is that the territorial jurisdiction of the second position extended to Palawan.

This theory of incompatibility is inconsistent and does not dovetail with the same theory of this very Supreme Court in the Santiago case, where this Court did not say anything incompatible with Santiago's functions as member of the Municipal Board where he was only a member of a deliberative body with semi-legislative function of enacting ordinances, and his position as Mayor of Manila, with executive functions to execute and enforce not only ordinances but the laws enacted by the legislature. If there was no incompatibility in the Santiago case, it is beyond comprehension of a reasonable person that an incompatibility could be seen in the Zandueta case, unless upon the assumption, which must be rejected, that in the Santiago case the Supreme Court acted blindly, or in the Zandueta case, he tried to see reality in a ghost.

The weakness of the decision in the Zandueta case may further be emphasized by the fact that it side-stepped the important constitutional question squarely raised in the case, the Court seeking a false refuge in an erroneous application of the theory of estoppel, as pointed out in the concurring opinion of Mr. Justice Laurel, who said: "I think the constitutional issue thus squarely presented should be met courageously by the Court, instead of applying to the petitioner the doctrine of estoppel which, in my humble opinion, is entirely inapplicable. The life and welfare of this government depends upon close and careful observance of constitutional mandates. For this reason, in clear cases, this Court should not hesitate to strike down legislative acts in conflict with the fundamental law. This Court is perhaps the last bulwark of constitutional government. It shall not obstruct the popular will as manifested through proper organs. It will adapt itself to the needs of an ever expanding present and face the future with a clear insight into economic and social values. It will keep itself alive to the dictates of national policy. But, in the same way that it cannot renounce the life breathed into it by the Constitution, so may it not forego its obligation, in proper cases, to apply the necessary corrective."

If there was no incompatibility in the Santiago case and the wrong decision in the Zandueta case cannot overrule the doctrine therein laid down, there is no reason why incompatibility can be invoked to presume that petitioner in the present case has abandoned his position as cadastral judge when he assumed the position of judge-at-large. As correctly stated by petitioner, both positions have similar rank, duties, powers and privileges. By section 1 of Commonwealth Act No. 304 cadastral judges "shall have the same rank, powers and privileges enjoyed and granted to judges of first instance," and Executive Order No. 395, dated December 24, 1941, provides that

cadastral judges shall have "general jurisdiction throughout the Philippines to try and determine all cases cognizable originally or on appeal by the courts of first instance."

Petitioner has not abandoned his position as cadastral judge when he assumed the position of judge-at-large. When he took the oath of office as a judge-at-large he only performed perfunctorily, as a matter of form, the official routine that would have entitled him to a small increase in salary, his last appointment having mainly the purpose not of changing his position which remained to be the same, but of entitling him to collect an increased salary. It is a general practice that for an officer or employee to be entitled to collect an increased salary, a new appointment must have to be issued to him for the same position embodying a statement of the increased salary. If the new appointment is disapproved, the employee does not cease from holding his position of office. It only deprives him of the right or privilege of enjoying the increase of salary.

There is absolutely no reason why the same rule cannot be applied in petitioner's case, which substantially is the same as the hundreds of thousands of cases, which are happening everywhere in many branches of the government, in obedience to the constitutional guarantee that protects all officers and employees in the civil service from removal or suspension except for cause as provided by law (section 4, Article XII of the Constitution).

That constitutional guarantee of permanent tenure of office which protects all officers and employees in the civil service is also given to judges under the terms of section 9 of Article VIII of the Constitution, with the difference that the causes for their removal from office are limited to those mentioned in section 1 of Article IX and cannot be changed by laws enacted by Congress.

The guarantee for a relatively permanent tenure of office in favor of officers and employees in the civil service and judicial officers is for the purpose of protecting them against the powerful who may seek their removal out of spite or revenge because of an unfavorable action that, in the performance of official duty, the officer, employee, or the judge had to take in obedience to law and to the dictates of conscience. The guarantee is even stronger in favor of judges for the very strong reasons that judicial independence is universally recognized as indispensable for the effective administration of justice.

The issue in this case is more far-reaching than many could suspect. It goes to the very root of our judicial machinery and demands from this Supreme Court an unequivocal answer whether or not it has the wisdom and courage to fulfill its duty in upholding an independent judiciary.

Many cases may be cited of judges who, notwithstanding their having occupied positions in the executive department, had not for that reason lost their judgeships. Such was the case of a judge whom President Quezon appointed as sugar investigator. He remained in the judiciary until he became Chief Justice of the Supreme Court. Mr. Justice Roberts, of the United States Supreme Court, was appointed and acted as investigator of the Pearl Harbor disaster that started the Pacific war, but remained to be a member of said tribunal. The same thing happened to Mr. Justice Jackson, also of the highest tribunal of the United States of America, who was appointed to and assumed the position of prosecutor of the Nazi war criminals in the Nuremberg trials. We have also the case of Judge Amparo of the Court of First Instance of Nueva Ecija who was brought to Manila to preside over an investigating committee in the executive department. He continues to be a judge and no one has ever hinted that he had lost his judgeship.

If incompatibility of functions is to be taken as ground to conclude that there is abandonment or waiver of a judicial position, an argument that is now brandished against Judge Summers, notwithstanding the fact that in assuming the position of judge-at-large, he continued exercising exactly the same judicial functions that he has been exercising as cadastral judge, the sameness being expressly declared and provided by law, why is it that the same yardstick has not been applied to the cases we have just mentioned, where the judicial officers have exercised non-judicial executive functions, absolutely alien to their respective judicial functions?

Why should we give to Judge Summers ground to complain that he has been discriminated against because of an official inconsistency that the Supreme Court dares not to blast?

Keen observers point out as the main cause of the current troubles in Central Luzon lack of faith and confidence. The peasants have lost confidence in the government and faith in the men running it. They believe that they cannot trust the protection of their rights and liberties to official agencies and that there are not men in the government who can give redress to their grievances. They were told that they can put in the government persons in whom they have confidence through elections. They would counter with the grim fact that they have elected such persons, but they were not allowed to take their seats.

Popular faith and confidence cannot be aroused and kept alive with a token democracy. It is not enough to set up a Republican government, with a democratic structural skeleton whose front offers all the appearances of

popular sovereignty. The people will not be satisfied with anything less than true democracy in action, where the sincerity of the persons holding positions of leadership and responsibility would not be found wanting in actual test. It is useless to panegyrize democracy as the best political system ever conceived, when once put into practice it is sabotaged by the double-dealing of the men on whose shoulders weighs the responsibility of making it a success. A sham democracy is a fertile breeding ground for any doxy that may offer the allurement of a promissory land, where the masses will enjoy better conditions of life. No genuine democracy can exist where there is no free and clean elections, where the chosen representatives of the people are cheated of the positions to which they were elected, where the unfortunate are denied the same opportunities for economic and social advancement and to seek redress against any injustice as the most fortunate individuals in the community, where the judicial independence, as guarantee for a courageous administration of justice, is jeopardized, and where the highest Tribunal would deny protection to inferior judges whose independence is the object of unconstitutional onslaughts.

For all the foregoing, we vote to grant the petition, so that petitioner may continue enjoying his position as cadastral judge until he reaches the constitutional age limit.

BRIONES, *M.*, disidente:

Se halla envuelto en este asunto el principio constitucional de la inamovilidad de los jueses—principio que constituye la base de una judicatura fuerte, imparcial, absolutamente independiente e inmune a los vaivenes y sacudidas del flujo y reflujo de la política partidista al uso. La decisión de la mayoría, siento tener que decirlo, no deja bien parado dicho principio. De ahí la presente disidencia.

La decisión se funda práctica y sustancialmente en la sentencia dictada en el caso de Zandueta *contra* De la Costa, 38 Gac. Of., 2352. No estoy conforme con la doctrina sentada en aquel asunto. Personalmente creo que la Corte Suprema perdio en el mismo una preciosa oportunidad para establecer sobre bases firmes e inconmovibles la independencia de nuestra judicatura declarando inconstitucional el cese automático de los jueces con motivo de la ley de reorganización judicial que dió lugar a dicho asunto, y evitando de esta manera que sobre la cabeza del pobre juez estuviese suspendida como una ominosa espada de Damocles la amenaza de una reorganización, y acabando consiguientemente con el vergonzoso y deprimente espectáculo de que a raiz de cada reorganización judicial los jueces hiciesen antesala en las oficinas o en la residencia de los poderosos para asegurar la continuidad de su ejercicio. (Es de celebrar, sin embargo,

que una opinión pública más militante y la presencia en las cámaras legislativas de elementos progresivos vitalmente preocupados por el principio de la independencia judicial, hayan impedido que la ultima ley de reorganización, aprobada recientemente, tuviera el efecto catastrófico de leyes similares en el pasado.)

Con todo, sostengo que, aún a la luz de la doctrina sentada en el caso de Zandueta, el recurrente Juez Summers tiene derecho a ser repuesto en su anterior cargo de Juez de Catastro. Zandueta perdió su asunto por haber llegado esta Corte a la conclusión de que habia incompatibilidad entre la Sala que el tenía antes de la reorganización y la Sala que aceptó después, pues a esta se añadió el juzgado de otra provincia. En otras palabras, se declaró que el Juez Zandueta habia renunciado por abandono su anterior Sala al aceptar otra diferente. Como se ve, la sentencia se fundó en la teoría de que cada distrito judicial, con su jurisdicción territorial limitada, es diferente de otro distrito y, por tanto, incompatible con el mismo.

En el presente asunto, sin embargo, el cargo de Juez de Catastro que Summers abandonó no era incompatible con el cargo de Juez *at-large* que aceptó, pues ambos juzgados no ejercían jurisdicción sobre un area territorial circunscrita, sino que la epercían al traves de todo el pais. Por virtud de la Orden Ejecutiva No. 395, serie de 1941, que tenía caracter de ley y estaba vigente cuando Summers fue nombrado Juez *at-large,* el Juez de Catastro quedó prácticamente convertido en Juez *at-large.* Así que no puede decirse que la aceptación de lo uno era incompatible con la aceptación de lo otro, y ninguna sutileza argumentista podrá jamas convencer a nadie de lo contrario. Hay ciertas cosas que son tan de sentido común que resulta superfluo arguir sobre ellas.

Se dice que Summers, si quería conservar su juzgado de catastro, lo que debía haber hecho era no haber aceptado su nombramiento de Juez *at-large,* o haberlo aceptado mediante protesta o reserva. De donde resulta que a Summers se le castiga precisamente por haber ejecutado un acto de cortesía y disciplina oficial, aceptando un nombramiento que creyó se le tendía de buena fe y no como una celada para echarle de la judicatura por la puerta trasera. Lo menos que se puede decir es que la teoría me parece peregrina. No sólo fomenta la descortesía, la indisciplina, sino que, además, justifica el recelo, la suspicacia, haciendo que el Juez, al recibir un nombramiento, se ponga en guardia y sospeche de que se le tiende un lazo para eliminarle. La teoría, como teoría de gobierno, me parece subversiva. No comprendo cómo se le pueda tomar en serio.

Me parece mejor, mucho mejor, la teoría de la franqueza. Si el Juez acepta un nombramiento del Ejecutivo

dentro de la misma judicatura y después ese nombramiento no es aprobado por la Comisión de Nombramientos por motivos que no constituyen motivo de destitución contra el Juez, la mejor teoría es que esa aceptación no se interprete en su contra, sino que se le devuelva a su anterior destino. En otros términos, no se debe aceptar una teoría que permita la remoción del Juez por método indirecto como es un nuevo nombramiento. Si hay algo contra el Juez, deben seguirse estrictamente los trámites que señalan la constitución y las leyes para su remoción.

Voto, por tanto, en favor del recurso.

Petition dismissed.

[No. L-2302. Octubre 25, 1948]

ISAIAS YCAIN, recurrente y apelante, *contra* PABLO CANEJA, recurrido y apelado

1. ELECCIONES; CERTIFICADO DE CANDIDATURA PARA LOS FINES LEGALES; REQUISITOS.—Un certificado de candidatura rechazado no puede ser considerado como certificado de candidatura para los fines legales, sino como un simple pedazo de papel que lo tiene el candidato en su bolsillo. Para que un certificado de candidatura pueda considerarse como tal son necesarios dos actos: (1) su presentación, y (2) la aceptación por el funcionario autorizado por la ley dándole el curso correspondiente.

2. ID.; ID.; EN CARGOS MUNICIPALES.—El artículo 36, párrafo (*c*) dispone que: "Los certificados de candidatura para cargos municipales se presentarán al secretario municipal, quien enviará inmediatamente copias de los mismos a los colegios electorales correspondientes, al secretario de la junta provincial y a la Comisión de Elecciones."

3. ID.; CANDIDATO; CAUSAS DE INHABILITACIÓN.—Hay varias causas de inhabilitación (disqualification) para que una persona sea ineligible: la falta de residencia, la de no contar con la edad marcada por la ley; la falta de certificado de candidatura y otras muchas. La retirada de un certificado de candidatura por un candidato le hace ineligible para el cargo al cual era candidato: queda inhabilitado para ser candidato.

4. ID.; RETIRO; CERTIFICADO DE CANDIDATURA; INHABILITADO PARA SER CANDIDATO.—En el asunto de Clutario *contra* Comisión de Elecciones (R. G. No. L-1704, Noviembre 5, 1947), este Tribunal resolvió que "A registered candidate, once he has withdrawn his certificate of candidacy, becomes 'disqualified', under section 38 and others of the Election Code. One of the indispensable 'qualifications' for eligibility is the filing of a certificate of candidacy, as expressly provided by section 31 of the Revised Election Code; and a candidate, who has withdrawn his certificate of candidacy, is disqualified to be elected for a position for which he has no certificate of candidacy filed in accordance with law."

5. ID.; ID.; ID.; NADIE PUEDE IMPEDIRLE; JUSTO ES PERMITIR QUE OTRO SE PRESENTE EN SU LUGAR.—Como nadie puede impedirle a retirar su certificado de candidatura—con fines aviesos o justificados—es solamente justo en una democracia permitir que otro se presente en su lugar, para que el electorado tenga oportunidad de expresar por medio de las balotas su libre vo-

luntad. Impedir que alguien presente su candidatura en semejante caso es sancionar la elección del único candidato restante con un solo voto, el suyo. Eso es absurdo bajo un régimen en que la opinión pública debe ser debidamente atendida.

APELACIÓN contra una orden del Juzgado de Primera Instancia de Leyte. Piccio, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Antonio Montilla en representación del recurrente-apelante.

D. Mateo Canonoy en representación del recurrido-apelado.

PABLO, *M.:*

Se trata de una apelación interpuesta por el recurrente contra la orden del Juzgado de Primera Instancia de Leyte sobreseyendo su protesta electoral.

Del convenio de hechos entresacamos los siguientes por orden cronológico:

Brígido Caneja e Isaías Ycain presentaron su certificado de candidatura para el cargo de Alcalde del municipio de Naval, Leyte, dentro del período prescrito por la ley.

Brígido Caneja solicitó su inscripción como elector y la Junta de Inspectores la denegó porque no había tenido seis meses de residencia. Esta decisión ha sido confirmada por el Juzgado de Primera Instancia de Leyte en su decisión de 24 de Octubre de 1947.

Pablo Caneja presentó en 4 de Noviembre un certificado de candidatura para el cargo de Alcalde; pero el Secretario Municipal lo rehusó por haber sido presentado fuera del tiempo fijado por la ley.

En 7 de Noviembre de 1947, Brígido Caneja envió una comunicación al Secretario Municipal dándole cuenta de que había enviado a todas las Juntas de Escrutinio de todos los precintos electorales del municipio una notificación de que había retirado su candidatura.

En 9 de Noviembre de 1947, la Comisión Electoral envió un telegrama al Fiscal Provincial de Leyte del tenor siguiente:

"Following telegram was sent by us to Municipal Secretary of Naval quote reurs 18th instant please give due course to certificate candidacy of Pablo Caneja for mayor that municipality so that he may be voted for and votes cast his favor counted unquote please see that he complies by accepting and giving due course to certificate candidacy of Pablo Caneja." (Exhibit F.)

Obrando de acuerdo con este telegrama transmitido por el Fiscal Provincial, el Secretario Municipal dió curso al certificado de candidatura de Pablo Caneja.

En 27 de Diciembre de 1947, la Junta Municipal de Escrutinio proclamó electo alcalde a Pablo Caneja, con una

mayoría de 4 votos sobre su contrincante Isaías Ycain, y en 3 de Enero del sigiuente año, éste presentó su protesta que fué sobreseída después de la vista correspondiente.

En apelación, el recurrente contiende que los votos adjudicados al protestado son nulos y de ningún valor y deben ser considerados como votos desperdigados por la razón de que el protestado no presentó su certificado de candidatura dentro del término legal, o sea, en o antes del 12 de Septiembre de 1947; que sólo lo presentó el 4 del mismo mes de Noviembre y el artículo 31 del Código Electoral Revisado dispone que: "Ninguna persona será elegible a menos que, dentro del plazo fijado por la ley, presente un certificado de candidatura debidamente suscrito y jurado;" que el protestado, por ineligible, no tiene derecho a ocupar el cargo de alcalde.

Es verdad que el recurrido presentó su certificado de candidatura el 4 de Noviembre de 1947, pero como fué rechazado no puede ser considerado como certificado de candidatura para los fines legales, sino como un simple pedaso de papel que lo tiene el candidato en su bolsillo. Para que un certificado de candidatura pueda considerarse como tal son necesarios dos actos: (1) su presentación, y (2) la aceptación por el funcionario autorizado por la ley dándole el curso correspondiente. Si no fuese por la intervención de la Comisión Electoral y del Fiscal Provincial de Leyte, el Secretario Municipal no hubiera dado curso al certificado de candidatura de Pablo Caneja en 9 de Noviembre. El artículo 36, párrafo (*c*) dispone que: "Los certificados de candidatura para cargos municipales se presentarán al secretario municipal, quien enviará inmediatamente copias de los mismos a los colegios electorales correspondientes, al secretario de la junta provincial y a la Comisión de Elecciones." El certificado de candidatura de Pablo Caneja solamente fué debidamente presentado, de acuerdo con la ley, el 9 de Noviembre, el segundo día después que Brígido Caneja había ya retirado su certificado de candidatura. El artículo 38 del Código Electoral Revisado dispone que: Si, después de expirado el plazo para la presentación de certificados de candidatura, falleciere o quedare inhabilitado un candidato con certificado de candidatura debidamente presentado, cualquier ciudadano legalmente habilitado podrá presentar un certificado de candidatura para el cargo al cual era candidato el difunto o inhabilitado de conformidad con los artículos anteriores en o antes del mediodía del día de la elección." El certificado de candidatura, pues, de Pablo Caneja se ha presentado de acuerdo con esta disposición de la ley.

El recurrente arguye que la presentación del certificado de candidatura de un candidato en sustitución de otro es solamente permisible cuando el primer candidato fallece o queda inhabilitado; que si Brígido Caneja quedó inha-

bilitado para votar por decisión del Juzgado de Primera Instancia, y, por tanto, inhabilitado para ser candidato, esa inhabilitación ya existía aun antes de la retirada de su candidatura. No fué la falta de residencia la que le inhabilitó a Brígido Caneja, sino la retirada de su candidatura. Hay varias causas de inhabilitación (disqualification) para que una persona sea ineligible: la falta de residencia, la de no contar con la edad marcada por la ley; la falta de certificado de candidatura y otras muchas. La retirada de un certificado de candidatura por un candidato le hace ineligible para el cargo al cual es candidato: queda inhabilitado para ser candidato. Al retirar Brígido Caneja su certificado de candidatura en 7 de Noviembre, quedó inhabilitado para ser candidato; por tanto, otro, en sustitución de él, podía presentar el suyo: y así lo ha hecho Pablo Caneja. En el asunto de Clutario *contra* La Comisión de Elecciones, G. R. No. L–1704, Noviembre 5, 1947, este Tribunal resolvió que "A registered candidate, once he has withdrawn his certificate of candidacy, becomes 'disqualified,' under section 38 and others of the Election Code. One of the indispensable 'qualifications' for eligibility is the filing of a certificate of candidacy, as expressly provided by section 31 of the Revised Election Code; and a candidate, who has withdrawn his certificate of candidacy, is disqualified to be elected for a position for which he has no certificate of candidacy filed in accordance with law."

Concluimos que Pablo Caneja no es ineligible: debe ocupar el cargo que la voluntad del electorado de Naval le ha conferido. Impedir que un ciudadano presente su certificado de candidatura después de expirado el plazo fijado por la ley y después que el candidato registrado haya retirado su certificado, es poner en manos de este individuo—a su arbitrio y capricho—el sufragio popular. Como nadie puede impedirle a retirar su certificado de candidatura—con fines aviesos o justificados—es solamente justo en una democracia permitir que otro se presente en su lugar, para que el electorado tenga oportunidad de expresar por medio de las balotas su libre voluntad. Impedir que alguien presente su candidatura en semejante caso es sancionar la elección del único candidato restante con un solo voto, el suyo. Eso es absurdo bajo un régimen en que la opinión pública debe ser debidamente atendida.

Se confirma la orden apelada con costas contra el apelante.

Moran, Pres., Ozaeta, Feria, Briones, y *Montemayor, MM.*, están conformes.

Parás, J., concurs in the result.

PERFECTO, *M.:*

Concurro con la parte dispositiva.

TUASON, *J.*, dissenting:

The decision of the majority is contrary to this Court's resolution in Clutario *vs.* Commission on Elections, G. R. No. L–1704, and the positive requirement of section 31 of the Revised Election Code. The only instances in which a candidate is allowed to present a certificate of candidacy after the expiration of the date for the filing of such certificates are the death or disability of a duly registered candidate occurring after the deadline. Voluntary withdrawal by a candidate does not come within the purview of the exceptions. Section 31 is so clear that courts have no discretion to enlarge its exceptions. Courts are not warranted in disregarding the clear, positive mandate of a law to do justice in the instance, or upon considerations of democracy or social advantages.

The grounds upon which the prevailing opinion excludes the present case from the operation of section 31 are not, in my humble judgment, sound even from the standpoint of public needs or natural justice. To allow a candidate to present a certificate of candidacy out of time only because a duly registered candidate retires would not avoid or remedy the possible anomalous situation which the decision abhors. On the contrary, it would be conducive to another and greater evil and injustice. It would open the door to combinations and collusions whereby a candidate who finds himself hopelessly weak or for other reasons could withdraw from the race so that he might be substituted by another with better prospects of success.

Nor would it preclude a candidate from betraying his party or the group that put in his candidacy. To quit the contest is not the only means of insuring the election of the opposing candidate. One who would double-cross his supporters could better accomplish his purpose by remaining an ostensible candidate and as such candidate making statements and committing acts that would alienate votes from himself. Anyway, one who would be capable of such treacherous conduct as the decision visualizes could not be of much use to the party or group that sponsored his candidacy, nor perhaps be a good public servant.

BENGZON, *J.*:

I concur in the above dissent.

Se confirma la orden.

[No. L–2499. October 25, 1948]

JOSE ESTEVA Y DE LOS REYES, petitioner, *vs.* THE DIRECTOR OF PRISONS, respondent

1. HABEAS CORPUS; COURT OF SPECIAL AND EXCLUSIVE CRIMINAL JURISDICTION; VALIDITY OF COMMITMENT AFTER LIBERATION.—In Peralta *vs.* Director of Prison (42 Official Gazette, 198), we

held that sentences of the Manila Court of Special and Exclusive Criminal Jurisdiction on crimes of similar nature punished by Act No. 65 of the war-time Philippine Republic (rebellion, sedition, illegal possession of firearms, etc.) although good and valid during the Japanese military occupation, nevertheles ceased to be valid upon the restoration of the Commonwealth.

2. PRISONS AND PRISONERS; INCARCERATION UNDER A VOIDED ORDER MAY NOT BE IMPUTED TO TERMS OF IMPRISONMENT IN THE ABSENCE OF LAW; DISCRETION OF CORRESPONDING AUTHORITIES.—The months and days the prisoner stayed in Bilibid from the date of liberation to October 23, 1947 may not be imputed to the imprisonment provided in valid commitments. However, there is nothing to prevent the corresponding authorities to consider such incarceration under a voided order as an equitable factor to determine whether this prisoner should now be permitted to march out on parole or otherwise.

ORIGINAL ACTION in the Supreme Court. Habeas Corpus.

The facts are stated in the opinion of the court.

The petitioner in his own behalf.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Lucas Lacson* for respondent.

BENGZON, *J.:*

The petitioner seeks to be released from the custody of the Director of Prisons alleging that he is undergoing a term of imprisonment ordered during the days of Japanese occupation by the Court of Special and Criminal Jurisdiction of Manila, and that such court had no authority to try and punish him.

According to the return of the respondent, Jose Esteva y de los Reyes is held in prison by virtue of the following commitments:

"(*a*) Commitment order dated June 13, 1944, pursuant to the decision of the Court of Special and Exclusive Criminal Jurisdiction in criminal case No. 31 sentencing the petitioner to 10 years of imprisonment for illegal possession of firearms;

"(*b*) Commitment order dated October 23, 1947, pursuant to the decision of the Court of First Instance of Manila in criminal case No. 1513 (C. F. I.—Manila) sentencing the petitioner to one month and 1 day of imprisonment for the crime of damage to property thru reckless imprudence;

"(*c*) Commitment order dated November 21, 1947, pursuant to the decision of the Court of First Instance of Manila in Criminal case No. 1590 (C. F. I.—Manila) sentencing the petitioner from 1 year to 3 years of imprisonment for the crime of illegal possession of firearms;"

The first commitment, signed by the Hon. Gaudencio Garcia, Judge, Court of Special and Exclusive Criminal Jurisdiction, Branch II of Manila, remitted the prisoner to the Director of Prisons, for the crime of illegal possession of firearms, to serve a jail term of ten years commencing on the 13th day of June, 1944. The validity of this commitment is challenged by petitioner.

In Peralta *vs.* Director of Prisons, 42 Off. Gaz., 198, we held that sentences of that court on crimes of similar nature punished by Act No. 65 of the war-time Philippine Republic (rebellion, sedition, illegal possession of firearms, etc.) although good and valid during the military occupation of the Philippines by the Japanese forces, nevertheless ceased to be valid upon the re-occupation thereof by the American forces and the restoration of the Commonwealth.

It is clear that this first commitment lost its force and effect upon the advent of liberation from the Japanese invaders. And herein petitioner would undoubtedly be entitled to his freedom right now except for the two other commitments above mentioned which were ordered by our existing courts of justice and which petitioner does not question in any manner. These add up to a maximum term of three (3) years, one (1) month and one (1) day, which, with good conduct time allowance would in due course be completed on May 26, 1950. This, upon a computation that begins from October 23, 1947.

The months and days the prisoner stayed in Bilibid from the date of liberation to October 23, 1947 may not of course be imputed to the terms of imprisonment provided in these last two commitments. The reason is that we can find no law authorizing such imputation. However, in fairness to the prisoner we could state that there is nothing to prevent the corresponding authorities, in the exercise of their administrative discretion, to consider such incarceration under a voided order as an equitable factor in their deliberations to determine whether this prisoner should now be permitted to march out on parole or otherwise, inasmuch as he has admittedly served the minimum period fixed in the valid sentences presently holding him in restraint. Which is to say that applicant's road to freedom lies in another direction.

The petition for habeas corpus may not be granted. Writ denied.

Moran, C. J., Ozaeta, Parás, Feria, Pablo, Perfecto, Briones, Tuason, and *Montemayor, JJ.,* concur.

Writ denied.

[No. L-2078. October 26, 1948]

PACITO ABREA, petitioner and appellant, *vs.* ISABELO A. LLOREN, respondent and appellee

1. ELECTIONS; BALLOTS, APPRECIATION OF; NICKNAMES, USE OF, DOES NOT ANNUL BALLOT; PARAGRAPH 9, SECTION 149, OF REVISED ELECTION CODE, SCOPE OF.—Rule No. 9 of section 149 of the Revised Election Code provides only for the determination of whether a ballot or vote shall or shall not be annulled on the ground that it is marked by means of a nickname. It says

that it shall not be annulled on that ground unless the nickname, accompanied by the name or surname of the candidate, was used as a means to identify the voter. It does not say that when a nickname alone is written to identify the candidate voted for the vote is invalid. If it had been the intention of the Congress to annul such vote it would have preserved in the Revised Election Code the provision of a previous election law (Act No. 4203, section 16), which said: "* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy."

2. ID.; ID.; CHRISTIAN NAME OR SURNAME, SUFFICIENCY OF.—Under rule No. 1 of section 149 of the Revised Election Code, any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office.

3. ID.; ID.; ID.; NICKNAME, SUFFICIENCY OF.—When the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and when he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office.

4. EVIDENCE; APPELLATE COURT NOT BOUND TO CONSIDER ADMISSIBILITY OF, UNLESS OBJECTED TO.—This Court is not bound to consider the admissibility or inadmissibility of evidence in the absence of any showing that the adverse party duly interposed an objection to its admission.

Per PERFECTO, *J.*, concurring:

5. NICKNAMES.—As a general rule, votes cast in nicknames written in isolated ballots, should not be given effect in accordance with paragraph 9, section 149, in connection with section 34 of the Election Code.

6. CLEAR INTENTION OF THE ELECTORATE.—When the evidence on record shows that the nickname written in the ballots express the intention of the electorate to vote for a candidate, that intention must be given effect.

7. CONCLUSIVE EVIDENCE.—The fact that 602 ballots were cast with the names of Beloy, Biloy and Belog, nicknames of the Christian name Isabelo of a candidate, is conclusive evidence that the electorate voted in fact for said candidate.

8. LEGAL TECHNICALITIES.—Legal technicalities should be brushed aside for the sake of the fundamental purpose of popular suffrage that of giving effect to the will of the people as freely and clearly expressed in the ballots.

9. BASIC PRINCIPLE OF POPULAR SOVEREIGNTY.—Statutory provisions and judicial doctrines on elections are enacted and laid down to insure the determination of the true will of the people in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them".

10. THE SUPREME LAW.—All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat but to give effect to the basic principles of the Constitution. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

APPEAL from a judgment of the Court of First Instance of Leyte. Diez, J.

The facts are stated in the opinion of the court.

Conrado G. Abiera and *Braulio G. Alfaro* for petitioner and appellant.

Domingo Veloso & Castrence C. Veloso, and *Mariano de Joya, jr.* for respondent and appellee.

OZAETA, *J.:*

In the general elections of November 11, 1947, appellant Pacito Abrea and appellee Isabelo A. Lloren were the candidates for the office of municipal mayor of Inopacan, Leyte. In his certificate of candidacy appellee Isabelo Lloren stated that he was also known by the following names: Isabelo A. Lloren, Isabelo Lloren, Abrea, Beloy Abrea, Beloy Lloren, I. Lloren, I. Abrea, Loy Lloren, and Loy Abrea.

The municipal board of canvassers proclaimed Isabelo Lloren municipal-mayor-elect with 1,010 votes, which gave him a majority of 198 votes over Pacito Abrea, who obtained only 812 votes.

Pacito Abrea protested the election of his opponent on four grounds, only the first of which is relied upon by him in this appeal, to wit: "(*a*) That a total of 417 votes cast in all the precincts in said municipality in favor of one Beloy as clearly written in the ballots were credited and read in favor of the above respondent."

In the course of the trial the ballot boxes were opened, and it resulted that 517 votes were cast for the office of municipal mayor in the name of Beloy, 77 votes in the name of Biloy, and 8 votes in the name of Belog.

The trial court found—and its finding is not questioned in this appeal—that it had been clearly proved that the protestee Isabelo A. Lloren was popularly and commonly known in the whole municipality of Inopacan by his nickname Beloy or Biloy; and that the protestant himself proved that before and on the day of the election the protestee distributed sample ballots on which was written the name Beloy on the line corresponding to the office of municipal mayor. The trial court also found that in the said elections in Inopacan there was no other candidate for mayor or any other office who was known by the name Beloy.

Declaring that the votes for municipal mayor in the names of Beloy, Biloy, and Belog had been correctly counted in favor of the protestee, the trial court confirmed the proclamation made by the municipal board of canvassers and declared the protestee municipal-mayor-elect of Inopacan, ordering the protestant to pay the costs. From that judgment the protestant has appealed to this court upon the questions of law which we shall now discuss.

1. Appellant's main contention is that the 602 ballots in which only the nickname Beloy, Biloy, or Belog was voted for municipal mayor should have been rejected, thereby adjudicating only 408 votes to the appellee against the appellant's 812 votes. In other words he contends that all ballots in which only the nickname of the appellee was written were invalid for said candidate. In support of his contention he cites paragraph 9 of section 149 of the Revised Election Code (Republic Act No. 180), approved June 21, 1947, which reads as follows:

"9. The use of nicknames and appellations of affection and friendship, if accompanied by the name or surname of the candidate, does not annul such vote, except when they were used as a means to identify their respective voters."

The foregoing is one of twenty-three rules for the appreciation of ballots contained in section 149 of the Revised Election Code, the first two rules being the following:

"1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter.

"2. A name or surname incorrectly written which, when read, has a sound equal or similar to the real name or surname of the candidate shall be counted in his favor."

Rule No. 9, which is relied upon by appellant, provides only for the determination of whether a ballot or vote shall or shall not be annulled on the ground that it is marked by means of a nickname. It says that it shall not be annulled on that ground unless the nickname, accompanied by the name or surname of the candidate, was used as a means to identify the voter. It does not say that when a nickname alone is written to identify the candidate voted for the vote is invalid. If it had been the intention of the Congress to annul such vote it would have preserved in the Revised Election Code the provision of a previous election law (Act No. 4203, section 16), which said:

"* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy."

The nonincorporation of that provision or rule in the Revised Election Code is indicative of the intention of the Congress to abandon it.

It is not contended by the appellant that the 602 votes in question should be annulled as marked ballots. His contention is that they should not be counted in favor of the appellee because the latter was not sufficiently identified by his nickname Beloy, Biloy, or Belog.

We agree, however, with the trial court that the appellee was sufficiently identified by his nickname Beloy or Biloy, first, because such nickname is a derivative, or a contrac-

tion, of his Christian name Isabelo; second, because he was popularly and commonly known in the entitre municipality of Inopacan by that nickname; and, third, because there was no other candidate for mayor with the same nickname. We do not deem it necessary to decide whether the eight votes for "Belog" are valid or not, because they are immaterial to the result.

Previous to the enactment in 1938 of the Election Code (Commonwealth Act No. 357) the rules were: (1) that ballots bearing the Christian name only or the Christian name and the initial of the surname of one candidate should be rejected as insufficient to identify the person voted for (Cailles *vs.* Gomez and Barbaza [1921], 42 Phil., 496, 533); and (2) that, for the same reason, votes cast with only the nickname or the familiar name should not be counted in favor of any candidate (Cecilio *vs.* Tomacruz [1935], 62 Phil., 689). But such rules were changed or abandoned by the legislature when it enacted section 144 of Commonwealth Act No. 357 and, subsequently, section 149 of Republic Act No. 180, which provided rules for the appreciation of ballots. Said section is a compilation in statutory form of most of the doctrines theretofore laid down by the Supreme Court regarding the appreciation of ballots. Rule No. 1 contained in section 149 reverses the doctrine or rule laid down by the Supreme Court regarding the use of the Christian name alone of a candidate by providing that—contrary to said doctrine—any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office. Hence, conformably to such purpose we hold that when the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and if he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office. This ruling is in consonance with the well-known principle of election law which this court reiterated in Mandac *vs.* Samonte, 49 Phil., 284, 301–302, as follows:

"A ballot is indicative of the will of the voter. It is not required that it should be nicely or accurately written, or that the name of the candidate voted for should be correctely spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which

will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded."

2. Appellant further contends that "the lower court erred in admitting evidence aliunde to determine the intention of the voter." Counsel in his brief does not specify what evidence he is referring to, nor does he show that it was admitted over his objection and exception. He merely says: "The fact that in its decision the lower court makes a conclusion that the protestee is popularly known in his place by the nicknames already mentioned, presupposes consideration of testimonial evidence to influence its mind in making said conclusion." He evidently refers to the proof upon which the trial court based its finding that the protestee was popularly and commonly known in the whole municipality of Inopacan by the nickname Beloy or Biloy. We do not feel bound to consider the admissibility or inadmissibility of such proof in the absence of any showing that the adverse party duly interposed an objection to its admission. But we think the protestee had the right to prove that he was popularly and commonly known by his nickname to overcome the contention of the protestant that the use of such nickname on the ballots in question did not sufficiently identify the protestee as the candidate voted for.

3. Lastly, appellant contends that the lower court erred in not ordering the recounting of all the votes of the contending candidates.

We think the trial court acted properly in limiting the inquiry to the number of votes cast for the protestee with only his nickname written on the ballots, because the basis of the protest was not that the election inspectors had erred in counting all the votes cast for each of the two candidates but that they erred in counting in favor of the protestee 417 votes in which only his nickname was used. No fraud, mistake, or misreading of the ballots was alleged in the protest. The issue presented to the court was confined to whether there were really 417 votes for the protestee in which the nickname Beloy alone was written and whether those votes were valid or not. If there were at least 417 of such votes and if they were not valid, the protestant should win because the protestee's majority was only 198 votes. The inquiry brought out the fact that there were more than 417 of such votes; but as a matter of law the court found that they were valid. We confirm that finding.

The judgment appealed from is affirmed, with costs. So ordered.

Moran, C. J., Parás, Pablo, Bengzon, Briones, and *Tuason, JJ.,* concur.

PERFECTO, *J.*, concurring:

Two candidates ran for mayor of Inopacan, Leyte, in the elections of November 11, 1947: Isabelo A. Lloren, Liberal, and Pacito Abrea, Nacionalista. The Liberal candidate was proclaimed elected with 1,010 votes, with majority of 198 against the Nacionalista who was credited with 812 votes.

The Nacionalista protested, seeking the annulment of 417 ballots in which Beloy was voted for mayor and were credited as votes for the Liberal candidate.

When the ballot boxes were opened, it was found that the names of Beloy, Biloy and Belog appeared written in the following numbers of ballots: Beloy 517, Biloy 77 and Belog 8. All these 602 ballots were counted among the 1,010 votes credited to the Liberal candidate.

The Nacionalista candidate contended in the lower court and in this appeal that the 602 ballots with the three nicknames should not be counted as votes for the Liberal candidate, invoking the numerous decisions of the Supreme Court holding that nicknames alone are not sufficient identification of a candidate. (Molina *vs.* Nuesa, G. R. No. 30548, June 5, 1929, not reported; Alegre *vs.* Perey, G. R. No. 3107, March 26, 1929, not reported; Valenzuela *vs.* Carlos, 42 Phil., 428; Bayona *vs.* Siatong, 56 Phil., 831; Marquez *vs.* Santiago, 57 Phil., 969; Fausto *vs.* Ramos, 61 Phil., 1035; Sarenas *vs.* Generoso, 61 Phil., 459; Cecilio *vs.* Tomacruz, 62 Phil., 693; Coscolluela *vs.* Gaston, 63 Phil., 41; etc.)

Paragraph 9, section 149, of the Election Code, taken jointly with the provision of section 34 thereof, that provides that "certificates of candidacy shall not contain nicknames of the candidates" and the fact that the nicknames alone in question are not mentioned by the Liberal candidate among the many names he has mentioned in his certificate of candidacy with which he alleged he is known, aside from the long line of decisions of the Supreme Court, appear to support the contention of the Nacionalista candidate. We are of opinion, however, that all these legal reasons must give way to the unmistakable expression of the popular will.

The record of the case offers conclusive evidence that those voters who cast their ballots for the three nicknames in question intended in fact to vote for the Liberal candidate who is known by the electorate, friends and opponents, by the nicknames in question, derivatives of his Christian name and are among the nicknames with which the people call for short those who carry the same Christian name.

It is inconceivable to nullify the votes of so many voters, more than one-half of those who voted for the Liberal candidate, when there is no possible mistake that they have

voted for said candidate. While we would not give effect to isolated ballots simply in nicknames, that may refer to persons other than a candidate, in abidance with the legal authorities above mentioned, in this specific case we feel no hesitancy in brushing them aside as ineffective legal technicalities for the sake of the fundamental purpose of popular suffrage: that of giving effect to the will of the people as freely and clearly expressed in the ballots.

Election statutory provisions and judicial doctrines are enacted and laid down to insure the determination of the true will of the people and to give it full effect, in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them." (Section 1, Article II.) All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat that basic principle but to give it full effect. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

We concur in the affirmance of the appealed decision.

Judgment affirmed.

[No. L-599. October 26, 1948]

AMALIA RODRIGUEZ, plaintiff and appellee, *vs.* PIO E. VALENCIA, and EMILIA H. RODRIGUEZ, defendants and appellants.

PURCHASE AND SALE; CONTRACT OF PURCHASE AND SALE OF REAL PROPERTY; EXISTENCE OF AGREEMENT NOT INCLUDED IN THE WRITTEN CONTRACT; BURDEN OF PROOF; EVIDENCE MUST BE CONVINCING AND CREDIBLE.—In affirmative averment the *onus probandi* falls on pleader's shoulder. The duty of showing to the satisfaction of the Court that verbal stipulation actually took place in addition to written agreement between the parties devolves upon the pleader. Uncorroborated testimony of plaintiff given with the help of leading questions from her own attorney and of information given to her by the lower court is unsatisfactory and unconvincing and rather leaves the impression that she had intended to have unskillfully woven a yarn coming from her imagination. Even from the point of view of equity, plaintiff's claim appears to be untenable.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Desquitado, Ybañez & Sarmiento for appellants.

Sotto & Sotto for appellee.

PERFECTO, *J.:*

On August 18, 1945, plaintiff sued defendants for the rescission of a contract of sale relating to lot No. 2151 of the Cebu cadastre. On November 14 a second amended complaint was filed wherein plaintiff alleged that in Oc-

tober, 1944, plaintiff sold to defendant lot No. 2151 of the plan of the burnt zone of the City of Cebu at the price of ₱200,000 in Japanese war notes and ₱5,000 in Philippine currency, defendants assuming the obligation of redeeming the property on their own account from a mortgage in favor of the Cebu Mutual Aid Association; that defendants only paid 2,000 Japanese pesos on October 18, 1944, 4,000 Japanese pesos on November 4, 1944, 20,000 Japanese pesos on March 29, 1945, and finally, 20,000 Japanese pesos on March 30, 1945, notwithstanding plaintiff's refusal to accept the last two payments, as the Americans had already arrived in Cebu and no one would accept Japanese war notes; that plaintiff happened to learn that ₱15,000 had been consigned with the court in favor of the Cebu Mutual Aid Association, notwithstanding the fact that the mortgage debt and interest were much less than said amount; that the sum of 5,000 Filipino pesos was not mentioned in any document for fear of the Japanese; that defendants have received from the American army a monthly rent of ₱99.12 since June; that defendants, notwithstanding repeated entreaties of plaintiff, failed to pay her the amount of 5,000 Filipino pesos, and that the Japanese notes have depreciated and in March, 1945, they had no value at all and they were declared illegal by the President of the Philippines. As a remedy plaintiff prayed for the rescission of the contract of sale and for costs.

Defendants answered, alleging that Pio E. Valencia was not a party to the transaction alleged in the complaint; that on November 1, 1944, plaintiff received from defendant Emilia H. Rodriguez the sum of ₱30,000 as first payment of the total of 200,000 pesos in Japanese military notes as the price agreed upon for the land in question, and out of said amount plaintiff deposited with the clerk of court an amount sufficient to pay her obligation with the Cebu Mutual Aid Association and thereby secured from the court an order releasing lot No. 2151 from the mortgage in favor of Cebu Mutual Aid Association; that once the property was free and unencumbered and upon receipt from defendant Emilia H. Rodriguez of the balance of the agreed price of ₱200,000, plaintiff executed in favor of said defendant on November 18, 1945, a deed of sale which was registered with the register of deeds for the City of Cebu and transfer certificate of title No. 1963 was issued in favor of said defendant; that receipt Exhibit 1 signed by plaintiff and deed of sale Exhibit 2, exhibited by plaintiff, both of which are attached to the answer, contain all and the only terms, agreements and conditions between the parties and that defendants had not at any time consented verbally or in writing to pay any additional amount to plaintiff.

On March 13, 1946, the lower court rendered decision wherein, instead of ordering the rescission of the sale, it

ordered defendant Emilia H. Rodriguez to pay plaintiff ₱5,000 and another amount of ₱133.33, and plaintiff to pay defendant the sum of ₱533.33. Defendant Emilia H. Rodriguez appealed.

The whole controversy in this case hinges on the truth or falsity of plaintiff's allegation that appellant agreed to pay her the amount of 5,000 Filipino pesos in addition to the 200,000 Japanese military notes as agreed in the deed of sale of November 18, 1944, where "the sum of two hundred thousand pesos only (₱200,000) in legal tender" is stated as consideration.

The question as to the truth or falsity of plaintiff's allegation depends in turn upon plaintiff's credibility, she alone having testified about the alleged additional amount not mentioned in any document.

Plaintiff testified that she is 66, single, resident of Cebu (1), and that she sold to Emilia Rodriguez a lot located at Plaridel Street, City of Cebu, at the agreed price of ₱200,000. (7).

"P. Cual era el convenio de ustedes sobre el precio? R. ₱200,000.

"Abogado Alonso. En que forma se ha convenido aquel contrato, por escrito o de la palabra? R. Por escrito.

"P. Y cual era el convenio de ustedes por la venta de aquel terreno, qué precio? R. ₱200,000 Japones más ₱5,000 Americanos." (7).

Immediately her attorney asked her whether she was paid the price, suggesting, at the same time, that the agreement was 200,000 Japanese pesos "mas ₱5,000 moneda Filipina," and she answered that the 200,000 Japanese pesos was paid. (8–9). As plaintiff continued to fail to mention the "₱5,000 moneda Filipina," her attorney made another reminder by asking her about "5,000 Filipinos," reiterating it by saying "5,000 pesos Filipinos convenidos," and asking her if it was mentioned in some document. The agreement was verbal, "por temor a los Japoneses. Habia prohibición, no podíamos hablar nada." But answering a question of the court, plaintiff alleged as reason for not asking any document the following: "Por mucha confianza, Señor Juez." (10). The agreement was entered into when plaintiff was living in her house in Tinago, corner of Martirez and Lopez Jaena streets, before it was burned on September 13. (11). But she made the first agreement on November 1, 1944, and she was living with the defendants in Dr. Valencia's house. Defendants "me recogieron en el incendio de Lopez Jaena." (12). Defendant Emilia H. Rodriguez paid her the money.

Dr. Pio E. Valencia has knowledge of the sale but he took no part in the transaction. (At this juncture plaintiff's counsel moved for the dismissal of the complaint against Dr. Pio E. Valencia and the Court granted the motion.) (13). Plaintiff remembers that 20,000 pesos

were paid to her on March 28 and another 20,000 on March 29, because they were Wednesday and Thursday of the Holy Week. She learned of the arrival of the Americans in Cebu because she saw them, but "they did not tell me anything, and she did not know anything, I was living in the interior, I did not know anything but in the afternoon." She learned about the entrance of the Americans on the 27th. They arrived in the morning and she saw the Americans in the afternoon. Notwithstanding the fact that the Americans had already arrived and she saw them on the 27th, plaintiff accepted payments on the 28th and 29th, because Emilia told her that the Japanese money was still good and that the Filipino Bank answered for it. (14). What plaintiff sold was only a parcel of land of 472 square meters. She does not know its value before the war, because then nothing has been offered for it. "When my house was burned, they took me and brought me to Mandawe." (15). She is a close friend of Emilia Rodriguez. She received several payments of 10,000 and 20,000. She did not count the number of payments "I started to get money from Emilia since October 18, 1943." (16). "I started to obtain money from Emilia on October 18, 1943 in small amounts, for food expenses." Prior to September 12, 1944, Emilia Rodriguez has been making payments to her, as she asked her for food expenses. She had the agreement with Emilia Rodriguez about the purchase and sale of the land in question, "I believe in 43; I do not remember anymore; in 43, because in September of 44 was when it (my house) was burned." Reminded of the first payment of 30,000 Japanese military notes made on November 1, 1944, plaintiff answered: "I did not receive 30,000 pesos; 15,000 pesos, to pay Aboitiz." (17.) Reminded by the Court that in the receipt she signed the amount of 30,000 appears, she answered: "I signed 15,000 pesos. Maybe they were the ones who put that 30,000." She admits having written in her own handwriting the receipt for 30,000 pesos in Japanese money Exhibit 1–A stated as follows:

Exhibit 1–A stated as follows:

"Yo Amalia Rodriguez mayor de edad y vecina de Cebu, Cebu viendo mi terren en la calle de Plaridel a Da. Emilia H. Rodriguez la cantidad de 200,000 dos cientos mil pesos Papel de Banco japones por lo cual juro de haber recibido dicha cantidad como primer pago 30,000 treinta mil pesos.

"Y por verdad firmo la presente en Mandaue 1.º de Noviembre de 1944.

"(Firmado) AMALIA RODRIGUEZ

"(Firmado) FILOMENO ROSAL
Testigo

"(Firmado) NATIVIDAD LOCAGBO
"Testigo"

Asked by the Court to explain why, while the receipt shows that she received 30,000 as part payment of the

agreed price of 200,000, she stated that she received 15,000 only. Plaintiff answered: "Yes, sir, 15,000 is what I only received to be paid to Marcelo Flores; he is the one who brought that amount to Aboitiz to pay my debt." Plaintiff admits having written in her own handwriting Exhibit 1-A, but she insisted that "I do not know who put 30,000; it was 15,000 only." (18). The Court insisted that she explained, and plaintiff said: "At that moment I must have been with unsound mind." Asked again why she was able to write and sign the receipt, she finally said that she was agreeable with the 30,000 appearing in Exhibit 1-A. But same amount was not the first payment. Ten thousand pesos was the first payment made by Emilia in Mandawe on October 18, 1943. "I asked her because she was the owner of the house and she told me that I was eating gratuitously, then I asked Emilia money for expenses." That was on October 18, 1943. (19). Asked by the Court to explain how the first payment was made to her in October, 1943, when the deed of sale was signed by plaintiff on November 18, 1944, plaintiff insisted "on October 18, I have the receipt, but I do not know where it is now in view of many transfers. I have a memorandum." Asked for further explanation, plaintiff said that she does not remember, although she remembers that it was on October 18, when she started to ask money from Emilia. Then she asked information from the Court as to when the fire in Lopez Jaena took place as a result of the first bombs dropped by the Americans. The Court advised her that it was in 1944, and the parties agreed that the first bombs were dropped on September 12, 1944, and after this information, plaintiff said that in said month she has been in Mandawe with defendant and in October she asked money from Emilia. For the previous payments no receipts have been issued. (20). Plaintiff does not remember that bombing of Cebu started on September 12, 1944, and continued up to March 27, 1945. All her transactions with defendant took place in Mandawe and then no one expected to live beyond 24 hours. Plaintiff was not able to ask from Emilia any receipt for the 5,000 pesos, Philippine currency, "for fear of the Japanese." Plaintiff has been in Mandawe for evacuation in September and October, 1944, and answered the following question of the court thus:

"The Court: The truth is that there, outside of the City of Cebu, Japanese money was not accepted?
"Answer: Yes, sir." (21).

When she made the contract, plaintiff believed that the Japanese money was good. (22). She asked 5,000 pesos, Philippine money, because it had better price than the Japanese money, which she accepted because defendant told her that there was no objection in adding 5,000 pesos.

(23). Plaintiff said: "No hemos avenido nada, sino que le pedi nada mas esos ₱5,000 como añadidura." Asked where and when the agreement about the ₱5,000 was entered into between her and Emilia, plaintiff answered: "The first agreement was in my house, before the fire, when they came to talk about the purchase; after that, the second, was in Mandawe." When plaintiff agreed with Emilia about the sale, it was before September, 1944, and plaintiff was still living in her house which has not yet been burned. (23). Then Emilia came to the house to propose the purchase. Plaintiff did not yet agree. She agreed when the house was already burned and when plaintiff was already living with Emilia in Mandawe. Plaintiff decided then to sell the land because there was no more house in the land. (24).

Several strong reasons militate against plaintiff's credibility.

1. Plaintiff admitted categorically that there was no agreement ("No hemos avenido," she said), but she made only her request for the additional 5,000 Philippine pesos. At the beginning of her testimony she mentioned ₱200,000 only as the agreed price.

2. Plaintiff testified that some one else had placed the amount of 30,000 pesos in receipt Exhibit 1–A, notwithstanding the fact that the figure and the words appear to be in the same handwriting of the receipt.

3. Plaintiff testified that she was not in her sound mind when she wrote receipt Exhibit 1–A.

4. Plaintiff gave two different reasons, one in each instance for not stating in any document the alleged additional 5,000 Philippine pesos.

5. Notwithstanding that she herself wrote in her own handwriting receipt Exhibit 1–A and she stated therein that she swears having received 30,000 pesos as first payment, she testified that she received only 15,000 pesos, and had to admit her conformity to the 30,000 pesos only after she could not explain her contradiction.

6. Plaintiff testified that she received the first payment from Emilia on October 18, 1943, in the amount of ₱10,000, while Exhibit 1–A shows that the first payment was in fact made on November 1, 1944, in the amount of ₱30,000, although she also testified having received then only ₱15,000.

7. Plaintiff testified that the agreement about the additional 5,000 was entered into twice, first, when she was still living in her house in Lopez Jaena before the same was burned, and the second, in Mandawe when she was living with defendant, while in another part of her testimony, plaintiff declared that when defendant went to her house before the same was burned, plaintiff had not yet agreed to sell her land.

8. Plaintiff testified that she has been receiving payments from Emilia before the fire that burned her house in Lopez Jaena on September 13, 1944, while testifying also that the agreement of sale was only covenanted at Mandawe in October, 1944.

9. Considering that the hearing of this case in which plaintiff testified took place in November, 1945, plaintiff's inability to determine whether it was in 1943 or in 1944 when she agreed with the defendant about the sale of her land is a thing that makes her testimony unreliable.

10. The fact that plaintiff does not remember the year when her house was burned and needed the help of the Court and of the attorneys of both parties to testify that the American bombings that caused the burning of her house started only on September 12, 1944, is an evidence of the fickleness of plaintiff's memory.

11. If there was such an agreement to pay her 5,000 Filipino pesos as an additional consideration, her alleged fear to the Japanese is not enough reason why plaintiff could not have obtained some kind of note from defendant Emilia H. Rodriguez that could be easily hidden and which Emilia could have issued considering that, according to plaintiff herself, they were close friends.

12. If said 5,000 Filipino pesos were the main consideration of the sale as plaintiff asks us to believe, no explanation whatsoever has been given why in the deed of sale or in any other document it could have not been stated that the 5,000 pesos should be paid when the war is over, a stipulation resorted to by all those who wanted to have payments in Filipino pesos.

13. Regarding the 5,000 Filipino pesos in question, plaintiff needed the help of leading questions propounded to her by her counsel, to remind her that they were Filipino pesos or Philippine money, as before said help was given she mentioned them as 5,000 American pesos, that is dollars, a thing that cannot be attributed to a mere tongue-slip, considering that plaintiff appears to talk good Spanish and to be intelligent. That plaintiff might have mistaken Filipino money with American money may only show that she did not learn her lesson at heart.

14. The glaring contradictions between the allegations of her complaint and plaintiff's testimony, such as those regarding the payments made to her by defendant Emilia H. Rodriguez and the inclusion of Dr. Pio E. Valencia as party defendant as one of those who bought the parcel of land in question. Although the complaint was drafted not by plaintiff but by her attorney, no one would suppose that the latter would have alleged in the complaint facts other than those given to him by plaintiff herself.

The agreement in question regarding the payment of additional 5,000 Filipino pesos is an affirmative averment

the *onus probandi* on which falls on plaintiff's shoulders. The duty of showing to our satisfaction that such an agreement actually took place, notwithstanding plaintiff's own commitments in receipt Exhibit 1–A dated November 1, 1944, and in the deed of sale Exhibit 2 which she executed on November 18, 1944, devolves upon her. As we have shown, plaintiff's uncorroborated testimony, even with the help of leading questions from her own attorney and of information given to her by the lower court, is unsatisfactory and unconvincing, and rather leaves the impression that plaintiff had intended to have unskilfully woven a yarn coming from her imagination.

Even from the point of view of equity, plaintiff's claim appears to be untenable. Under the circumstances, plaintiff cannot claim that the price paid to her as agreed upon in Exhibits 1–A and 2 was unfair. With a small part of said price, plaintiff was able to pay a debt of about ₱15,000 to guarantee which she had mortgaged the parcel of land in question plus the building erected thereon. Even in the lower court's assumption that the parcel of land may command a price of ₱11,133.34 in Philippine currency, plaintiff would appear as having profited from the transaction as, without it, she would have to pay now to the Cebu Mutual Building and Loan Association about ₱15,000, with the result that applying to it the price that, according to the lower court, the land may command, plaintiff will still be indebted in the amount of about ₱3,000.

The appealed decision is reversed in so far as it orders appellant Emilia H. Rodriguez to pay plaintiff the sum of ₱5,000, with costs of this appeal in favor of said appellant.

Moran, C. J., Parás, Pablo, Bengzon, and *Tuason, JJ.,* concur.

FERIA, *J.,* dissenting:

The plaintiff in the present case filed against the defendant a suit to rescind the contract of sale of a residential lot in the City of Cebu executed by the former in favor of the latter, on the ground that the defendant has failed to pay the plaintiff the sum of 5,000 pesos in Philippine currency, part of the purchase price agreed upon by the parties, besides the 200,000 pesos in Japanese war notes stated in the deed of sale; that the value of the said notes at the time of payment of 160,000 on account was very much depreciated, and when the balance of 40,000 was paid in March, 1945, the Japanese war notes were no longer acceptable as legal tender.

After trial, the lower court rendered a judgment ordering that the defendant Emilia Rodriguez to pay the plaintiff Amalia Rodriguez the sum of 5,000 pesos Philippine currency, plus ₱133.33, the equivalence in Philippine pesos of 40,000 pesos in Japanese war notes paid by the defendant

to the plaintiff on March 28, 29, 1945, and that if she fails to do so the contract of sale be considered cancelled, and the plaintiff shall return to the defendant the sum of 533.33 pesos in Philippine currency, which is the equivalent of the sum of 160,000 pesos in Japanese war notes received by the former from the latter. The court also ordered the return of the said 40,000 pesos in Japanese war notes received by the plaintiff from the defendant and presented by the former as Exihibits A to G in this case if the defendant so desires, with costs against the defendant.

The defendant appealed from the judgment of the lower court to this Supreme Court.

The questions involved in this appeal are: (1) whether or not the lower court erred in admitting, over the objection of the appellant, the testimony of the appellee relating to the alleged agreement that the appellee should pay the appellant ₱5,000 in Philippine currency, besides the sum of 200,000 pesos in Japanese war notes stated in the deed of sale as the purchase price of the land sold; and (2) whether or not the evidence presented by the plaintiff, if admissible, as well as that produced by the defendant show that there was really such an agreement.

(1) As to the first question, we are of the opinion and so hold that the trial court did not err in admitting the testimony of the plaintiff and appellee. The rule set forth in section 22, Rule 123, that when the terms of an agreement have been reduced to writing, no evidence of the terms of the agreement other than the contents of the writing is admissible, is subject to several exceptions. One of the exceptions is that such evidence is admissible "when the failure of the document to express the true intent and agreement of the parties is put in issue by the pleading." The present case falls under the exception, because the failure of the deed of sale to express the true intent and agreement of the parties was put in issue by the plaintiff in paragraph 5 of her complaint which alleges "that the five thousand pesos Philippine currency agreed upon was not reduced to writing because they were afraid of the Japanese," and by the defendant who avers in paragraph (*d*), third defense, of her answer, that "the document Exh. 2 contains all and the only terms, agreements and conditions between the parties thereto, the defendant's denying having agreed and consented at any time either before during or after the execution of said document, verbally or in writing, to pay the plaintiff an additional amount in consideration of or by reason of said sale."

(2) With respect to the second question, the trial court did not also err in declaring that the agreement to pay the additional sum of ₱5,000 in Philippine currency has been established by the evidence. The plaintiff-appellee testified that when she agreed to sell the property to the defendant

in October, 1944 (t. s. n., page 20), and the price of the property agreed upon was 200,000 pesos in Japanese war or military notes and ₱5,000 in Philippine currency; that the five thousand pesos was not mentioned in the deed of sale for fear of the Japanese; and that she did not ask any note or paper evidencing it because she had confidence in the defendant who was her very intimate friend; and that when she agreed to sell the property to the defendant-appellant she was living with the latter in the house of Dr. Pio Valencia for her house built on the lot sold was destroyed by the American bombs in October, 1944 (t. s. n., pp. 20, 24.) The defendant and appellant who was the best witness to deny the appellee's testimony if not true did not testify to contradict it.

The only witness for the defense, Marcelo Flores, testified that he acted as broker in the transaction and there was no such agreement about the additional ₱5,000, and that when the deed of sale Exhibit 2 was signed by the plaintiff and the notary public ratified it after reading the contents thereof to the plaintiff and asking her about the genuineness of the signature appearing thereon, plaintiff did not say anything about any other agreement with the defendant not contained in the deed. This testimony of the witness Flores does not belie the plaintiff's. The agreement about the five thousand pesos having been made by the plaintiff with the defendant personally in the house in which both of them were living, and not inserted in the document Exh. 2 because they were afraid of the Japanese, it was but natural for the plaintiff not to inform the notary and Marcelo Flores of said agreement. Besides as the lower court well said "It is not credible the supposed intervention of Flores in the transaction between the plaintiff and the defendant, because when it took place the former was living in the latter's house. Clearly there was no necessity for third person to intervene in it."

As to the probatory force of the uncontradicted testimony of the appellee, Moore on Facts says:

"Dr. Lushington laid it down as the 'strict line of all judicial proceeding, namely, to credit the evidence of respectable persons unless they are contradicted, or unless there is something in their testimony to excite a suspicion of the fidelity with which they have deposed.'

" 'The rights of the people would have no safeguard, and the courts of justice would afford no forum for the redress of wrongs, if the unimpeached and uncontradicted testimony of a witness can be overthrown without reason,' said Judge Gildersleeve of the New York Supreme Court, and he was speaking of the testimony of one who was an interested party to the suit.

"It is a 'well-settled principle of law, which is absolutely essential to the security of individual rights, that a witness who is unimpeached and uncontradicted must be believed,' said Judge Barculo of the New York Supreme Court.

" 'The jury might as well, in their arbitrary and sovereign pleasure, render a verict without evidence as against evidence,' said Judge Orton of the Wisconsin Supreme Court.

" 'That, when nothing appears to the contrary, the presumption is to be fairly indulged that an unimpeached witness has testified truly may be laid down as a principle derived from the experience and knowledge of mankind,' said Judge Boggs of the Illinois Supreme Court.

" 'Where the weight of credible testimony proves the existence of a fact, it must be accepted as a fact, * * * nor can conjectures be allowed to displace proofs,' said Judge Brawley of the federal District Court." (Moore on Facts, Vol. I, pp. 111–112.)

Failure of appellant to testify and contradict appellee's testimony about their agreement relating to ₱5,000 Philippine currency as additional purchase price, she being the only one who could have denied it if not true, gives rise to presumption or inference against her.

"SEC. 289. *Same*: (*d*) *Party himself failing to Testify.* (*d*) At common law the *party opponent in a civil case* was ordinarily privileged from taking the stand (*post.* sec. 2217); but he was also disqualified; and hence the question could rarely arise whether his failure to testify could justify any inference against him. But since the general abolition both of the privilege and the disqualification (*post,* sections 2218, 577), the party has become both competent and compellable like other witnesses; and the question plainly arises whether his conduct is to be judged by the same standards of inference. This question should naturally be answered in the affirmative:" (Wigmore on Evidence, Vol. II, p. 171, third edition.)

The finding of fact to the effect that there was really such an agreement, made by the lower court who saw the plaintiff testify, her demeanor and manner of testifying and was in a better position than this Court to weigh her testimony, should not be disturbed by this Court according to a long line of decisions of this Court:

"It is a well-known doctrine that in this jurisdiction the findings of fact made in the judgment appealed from are not disturbed by this court, unless it be shown that the court below has overlooked or misconstrued certain facts, which would otherwise change the result of the decision.

"And it has been repeatedly held that the Supreme Court would not disturb the findings of fact made by the trial court as to the credibility of witnesses, in view of their opportunity to observe the conduct and demeanor of the witnesses while testifying, and that their findings will generally be accepted and acted upon. People *vs.* De Asis, 61 Phil., 384; People *vs.* Garcia, 63 Phil., 296; People *vs.* Masin, 64 Phil., 757. In the instant case, there is absolutely no cause or reason appearing in the record to warrant a departure from such findings, and they must therefore be fully accepted. People *vs.* Istoris, 53 Phil., 91. (People *vs.* Borbano [1946], 43 Off. Gaz., No. 2, p. 478, 482.) Yambao *vs.* Tolentino; Melliza *vs.* Towle and Mueller, 34 Phil., 345; Baltazar *vs.* Alberto, 33 Phil., 336, 338; People *vs.* Istoris, 53 Phil., 91; People *vs.* De Asis, 61 Phil., 384; People *vs.* Garcia, 63 Phil., 296; People *vs.* Masin, 64 Phil., 757;" (People *vs.* Macalindong [1946], 43 Off. Gaz., No. 2, pp. 490, 493.)

The appellee's testimony pointed out in the decision as showing its incredibility is not borne out by the record.

(*a*) It is not true what is stated in paragraph 1 of the decision that the "plaintiff admitted categorically that there was no agreement ("no menos avenido," she said), but she made only her request for the additional ₱5,000 Philippine pesos. At the beginning of her testimony she mentioned ₱200,000 only as the agreed price."

That the plaintiff did not admit that there was no agreement about the said ₱5,000 is shown by her testimony in the following questions and answers on which the decision is mistakenly based:

"JUZGADO. Y por qué aceptó usted los otros?—R. Porque ella me dijo que si, que no hay inconveniente añadir ₱5,000.

JUZGADO. Cual de los dos ha creido usted, que es bueno el dinero japoneses?—R. No hemos avenido nada, sino que le pedí nada más esos ₱5,000 como añadidura." (Pp. 22, 23.)

From the foregoing it is obvious that there was such an agreement, because she asked the defendant to add to the ₱200,000 in Japanese war notes ₱5,000, and the defendant agreed to it, or said "Sí que no hay inconveniente añadir ₱5,000." The words "no hemos avenido" can not therefore refer to said ₱5,000 but to the question propounded or the plaintiff did not understand the meaning thereof.

That since the beginning of her testimony she mentioned ₱200,000 and the ₱5,000 as the agreed price, is evident. In the first page (7) of her testimony, she was asked the following first question about the purchase price: "Y cual era el convenio de ustedes por la venta de aquel terreno, que precio?" And she answered "₱200,000 japoneses, más ₱5,000 americanos."

(*b*) With respect to the averment in paragraph 4 of the decision that the "plaintiff gave two different reasons, one in each instance for not stating in any document the alleged additional ₱5,000 Philippine pesos" not stated in the deed, that is, the fear of the Japanese and her having much confidence in the defendant because she is her intimate friend and had her live in defendant's house. There is nothing in the reasons she gave derogatory to her credibility. Attorney for the plaintiff stated the following: "Propongo a la demandada que se admite el hecho de que durante el gobierno japones estaba prohibido el cambio." And the court ruled: "Se sabe eso, el juzgado puede tener conocimiento judicial."

(*c*) The remark in the decision (paragraph 7) that "the plaintiff testified that the agreement about the additional 5,000 pesos was entered into twice, first, when she was still living in her house in Lopez Jaena before the same was burned, and the second, in Mandawe when she was living with defendant," is not borne out by the record. Plaintiff's testimony is as follows:

"P. La propuesta venta?—R. Ellos fueron en casa, Emilia Rodríguez fué en casa para proponer esa compra.

"P. Y usted aceptó o no?—R. Todavía no.

"P. Cuando aceptó usted, ya se había quemado la casa de usted cuando convino en vender?—R. Si, señor.

"P. Entonces donde vivía usted?—R. En Mandawe.

"P. Con quien?—R. Con Emilia Rodríguez.

"ABOGADO ALONSO. Es todo."

It is against common sense that the defendant would propose to buy the land only while the plaintiff was still living in her house built on said land before the house was burned.

(*d*) There is no basis for the conclusion on par. 13 of the decision that the "plaintiff needed the help of leading questions propounded to her by her counsel, to remind her that they were Filipino pesos or Philippine money, as before said help was given she mentioned them as 5,000 American pesos, that is dollars, a thing that can not be attributed to a mere tongue-slip, considering that plaintiff appears to talk good Spanish and to be intelligent. That plaintiff might have mistaken Filipino money with American money may only show that she did not learn her lesson at heart."

A cursory reading of the plaintiff's testimony clearly shows that she is not intelligent and does not speak good not even mediocre Spanish.

If plaintiff were intelligent she would not have accepted the payment of the balance of 40,000 pesos in Japanese war notes after the Americans had already landed in Cebu, "porque no sabia yo que no recibian porque Emilia me dijo que sí, que todavia era servible, que respondía el Banco Filipino; ella me dijo la Sra. Emilia." And the plaintiff did not know how to explain the reason why, having received only 15,000 pesos on Nov. 1, 1944, to pay Aboitis in order to redeem the mortgage in favor of the Cebu Mutual Building and Loan Association (page 17), it appears in Exhibit 1–A of the same date that she received ₱30,000 as payment on account of the land sold, when she herself testified without contradiction that the first payment she received from the defendant ₱10,000 on October 18, after the destruction of her house by the American bombs in September 12, 1944 (pp. 19, 20), and afterward defendant had been giving plaintiff money for her expenses (pages 17, 19). And these previous payments, for which no receipts were given (page 20), must have been added to the ₱15,000 received on Nov. 1, 1944, to make a total of ₱30,000 appearing in Exhibit 1–A as first payment on account. From a reading of plaintiff's testimony, one will be convinced that she is a very candid and credulous woman who had relied on all she was told by the defendant, with whom and in whose house she had then been living and in whom she had much confidence according to her testimony (page 10).

With respect to plaintiff speaking good Spanish a cursory examination of her testimony shows the contrary. Upon being asked by the defendant's attorney whether she knew how to speak and write Spanish well, she answered "Puedo", and asked again "whether she knew how to read Spanish without aid," she replied "puedo." And being unable to explain in the stated preceding paragraph why it appears in Exhibit 1–A that she received on Nov. 1, 1944, ₱30,000, when she had only received then ₱15,000, she said, "no estaré en aquel momento en sano juicio," instead of "no estaría en mi" or something like it.

And going back to the point, the plaintiff, in answering to the first question about the agreement on the price of sale of the land: ₱200,00 japoneses, más ₱5,000 Americanos," (page 7) was confusing Filipino pesos with American pesos (not dollars) or calling Americanos the Philippine pesos, as shown by her answer to the Judge's question: ¿No es verdad que en Mandawe se usaban entre la gente el dinero nuestro, filipino? "No he visto por ella, no he visto dinero americano." (Page 21.)

(*e*) It is to be borne in mind, and this shows the ingenuity of plaintiff's testimony and that she was not instructed about what she had to testify, as hinted when writer of the decision says that "she did not learn her lesson at heart" (paragraph 11), that she was not sure or did not remember the year when her house erected on the land in question was burned, whether on September, 1943 or 1944, but she was positive that it was burned the first time Cebu was bombed by American planes. Upon being asked when did she begin to live with the defendant in the latter's house in Mandawe, she answered "Cuando se quemó mi casa el 13 de septiemebre del 43, creo, cuando se quemó, o 44; ese mismo año, me sacaron ellos por conducto del hijo, porque yo iba a Danao y me recogieron en Mandawe." (Page 17). And when plaintiff was asked by the judge about the year she received the first payment of ₱10,000, she answered "No recuerdo ya. Recuerdo muy bien, Sr. Juez, que el 18 de octubre es cuando empesé a pedir dinero de Emilia." (Page 20). But when the parties agreed that the first bombs fell in Cebu on September 12, 1944, then it was made of record by the judge that the plaintiff received the first ten thousand pesos on October 18, 1944 (page 20).

Almost immediately after the plaintiff has testified that she began to get money from the defendant from October 18, 1944 (instead of 1943) little by little for her living expenses, the following catching question in English was propounded to her by the attorney for the defendant: "Do you mean to say that prior to September 12, 1944, Emilia Rodriguez was making payment to you on sale of your land," and she answered "Sí, seguía dándome

segun lo que pedía yo, daba para gastos de comida." (Page 17). Undoubtedly when the plaintiff gave her answer she did not understand or was caught off guard by the catching question "Do you mean to say that prior to September 13," because what she said immediately before the question was "Cuando se quemó mi casa el 13 de septiembre me sacaron ellos," referring to defendants. Specially taking into consideration that it was made in English or an interpreter was used; that she subsequently reiterated on page 19 that "el primer pago que me dió Emilia en Mandawe era 10,000 pesos para compras de comida. Eso fué el 18 de octubre," and that it was impossible for the plaintiff to sell her land alone prior to the burning of the house on September 12, 1944. The decision makes a capital of said answer to discredit the testimony of the plaintiff and says "When plaintiff agreed with Emilia about the sale, it was before September, 1944, and plaintiff was still living in her house which was not yet burned." (Page 9, and paragraph 8, page 10.)

(*f*) With regard to the decision's reasoning that "fear of the Japanese is not enough reason why plaintiff could not have obtained some kind of note from defendant Emilia H. Rodriguez that could be easily hidden and which Emilia could have issued considering that, according to the plaintiff herself, they were close friends;" and that "if the said ₱5,000 Filipino pesos were the main consideration of the sale as plaintiff asks us to believe, no explanation whatsoever has been given why in the deed of sale or in any other document it could not have been stated that the 5,000 pesos should be paid when the war is over, as stipulation resorted to by all those who wanted to have payments in Filipino pesos" (paragraphs 11 and 12); it is sufficient to say that, according to the plaintiff, she did not ask for any receipt (meaning note) because of her fear of the Japanese (page 21), and that the plaintiff had much confidence in the defendant, who was her very intimate friend (page 16), and the defendant made her live in her house in Mandawe (st. n., p. 10). Which is confirmed by the fact that she had signed the document Exhibit 2 acknowledging receipt of ₱200,000 on November 18, 1944, when as a matter of fact admitted by the appellant, the balance of ₱40,000 was paid to her on March 28 and 29, 1945, when the Americans had landed already in Cebu, and the defendant made her believe that Japanese war notes could still be used and deposited in the bank. An ignorant and credulous woman as the plaintiff, who had much confidence in the defendant, her very close friend, can not be expected to devise such means as the decision suggests in order to insure the protection of her interests.

Having already shown that each and every point set forth in the decision to attack the credibility of the ap-

pellee's testimony are without any foundation, let us add the following about the shocking inadequacy of the price paid by appellant for the land, without the additional ₱5,000 Philippine pesos, which support the lower court's decision.

The difference between the market value of the property sold and the price in Japanese war notes paid for it, corroborates the uncontradicted testimony of the appellee. The lower court has in this connection the following to say:

"* * * This is on the one hand. On the other, on the date on which the plaintiff effected the sale of her lot, the Japanese occupation currency was worth 300 for one of the Philippine currency. Wherefore, 200,000 pesos in Japanese occupation money were not more than ₱666.66 in Philippine money. The lot conveyed is in the center of the commercial zone of this city, where, according to public knowledge, a square meter was quoted before the war at not less than ₱25.00, and said lot, which has an area of 472 square meters, was therefore worth ₱11,800. This amount, compared to 200,000 pesos in Japanese occupation money, gives a difference of ₱11,333.34 in Philippine money, which, reduced to Japanese occupation money, are equivalent to 3,340,002 pesos. It is also of common knowledge that on or about the date on which the contract referred to was executed, holders of Japanese occupation money were anxious to dispose of it at the rate not only of 300 to 1 but of 1 to 400. It can be conceived, therefore, that Amalia Rodriguez would effect the sale of her property without expecting to receive 5,000 pesos in Philippine currency, preparatory to the days which, she saw, were rapidly and inevitably announced by the American bombs that were constantly falling over the city." (Record on Appeal, pp. 12–13.)

The attorney for appellant contends that the rate of exchange prevailing in Cebu at the time the 160,000 pesos in Japanese military notes were paid was not 300 to 1 as found by the court below but between 70 and 100 to 1. Even assuming that the appellant's contention is correct, or that it was 100 pesos in Japanese war notes to ₱1.00 in Philippine currency the defendant-appellant had at most paid ₱1,600 in Philippine currency, the equivalence of 160,000 pesos in Japanese war notes, plus ₱133.33 which is the equivalence of ₱40,000 paid on March 1945, or a total sum of ₱1,733.33 Philippine pesos paid for the lot sold which was worth ₱11,800 in Philippine currency according to the finding of the lower court not assigned or attacked as erroneous by the appellant in her brief. The money in Japanese war notes deposited with the court to effect the redemption of the property sold, mortgaged then to the Cebu Loan Association, was taken or discounted from the purchase price paid in Japanese war notes by the defendant-appellant to the plaintiff-appellee according to appellant's own admission or allegation in her answer (paragraph [*b*] of third defense).

It is true that the plaintiff has paid or deposited with the court, out of the purchase price, the payment of her obligation of ₱12,000 with interests secured by the mort-

gage of the land and the building erected thereon which was destroyed by fire, but whether the payment was actually effected or not, the result is the same. If the payment was accepted and the land relieved of the mortgage lien, the plaintiff would have acquired for ₱1,733.33 Philippine pesos a land which was valued then at ₱11,800, and now about ₱47,200, for this court may take judicial notice of the increase in value of lots now, especially of commercial lots like the one in question, which are worth at least four times they were worth before. And if the payment has not yet been effected up to date or the courts declare the payment not valid, because of the value of Japanese war notes at the time of deposit, and the defendant *wants* to pay now ₱15,000, she would still get a benefit of over ₱30,000 out of the transaction, which is the difference between ₱15,000 she has to pay to the creditor plus ₱1,733 she had paid to the plaintiff or a total of ₱16,733, and the present market value of about ₱47,000.

In view of all the foregoing, it is therefore not only right and legal, but just and equitable to hold, as the lower court did, that the evidence shows that there was such an agreement of ₱5,000 Philippine currency as additional purchase price, which is very much less than the benefit to be derived by the defendant from the transaction, and to affirm the appealed judgment.

The judgment appealed from being in accordance with law and facts, is affirmed with costs against the appellant. So ordered.

Padilla, J., concurs.

Judgment reversed.

[No. L-2460. October 26, 1948]

NICETAS A. SUANES, petitioner, *vs.* THE CHIEF ACCOUNTANT, Accounting Division, Senate, and THE DISBURSING OFFICER, Disbursement and Property Division, Senate, respondents.

1. CONSTITUTIONAL LAW; RESPONSIBILITY REPOSED UPON THE ELECTORAL TRIBUNAL.—Our Constitution has unqualifiedly reposed upon the Electoral Tribunal the responsibility of being the "sole judge of all contests relating to the election, returns and qualifications" of the members of the legislative houses.
2. ID.; ELECTORAL TRIBUNALS; PURPOSE OR INTENTION OF THEIR CREATION.—The Electoral Tribunals are *independent* constitutional creations with specific powers and functions to execute and perform and the avowed purpose in creating them is to have *independent* constitutional organs pass upon all contests relating to the election, returns and qualifications of members of the Congress, devoid of partisan influence or consideration, which object would be frustrated if Congress were to retain that power.
3. ID.; ELECTORAL TRIBUNALS ARE EQUALLY SOVEREIGN TO OTHER POWERS OF GOVERNMENT OVER THEIR RESPECTIVE DOMAINS.—

Within the precise sphere of their functions, they are as sovereign over their internal affairs as are each of the other powers of government over their respective domains. Consequently, the employees of an Electoral Tribunal are its own, and not of the Senate nor of the House of Representatives nor of any other entity, and it stands to reason that the appointment, the supervision and the control over said employees rest wholly within the Tribunal itself.

4. ID.; ID.; THE INDEPENDENCE OF ELECTORAL TRIBUNALS MUST BE MAINTAINED IN THE PERFORMANCE OF THEIR DUTIES AND CONDUCT OF THEIR AFFAIRS.—The Electoral Tribunals must be independent not alone when they are deciding cases before them, but also when they are selecting their personnel which will aid them in the performance of their duties and when they are disposing of their funds for their necessary expenses. The selection of such personnel and the disposition of such funds have a substantial bearing upon the judicial functions of the Electoral Tribunals. If they may be forced to accept employees who deserve no trust from them and they may be dictated to in the disposition of their funds, the integrity of their proceedings and the correctness of their decisions may easily be impaired and defeated.

5. ID.; SEPARATION OF POWERS; EMPLOYEES OF THE ELECTORAL TRIBUNALS; THE INCLUSION OF APPROPRIATION FOR THE SENATE ELECTORAL TRIBUNAL IN SENATE'S BUDGET, DOES NOT AND CANNOT MEAN THAT EMPLOYEES OF SAID TRIBUNAL ARE EMPLOYEES OF THE SENATE.—The fact that the appropriation for the Senate Electoral Tribunal is included in the budget corresponding to the Senate, does not and cannot mean that the employees of the Electoral Tribunal are also employees of the Senate, for both institutions are separate and independent of each other under the Constitution.

6. STATUTES; STATUTORY CONSTRUCTION; APPROPRIATION FOR THE ELECTORAL TRIBUNAL; SECTION 3 OF REPUBLIC ACT NO. 320 CONSTRUED.—Whatever power is conferred upon the President of the Senate under this provision of law is specifically qualified and confined—"within the limits of the appropriations authorized in this Act *for the Senate.*" But the appropriation for the Senate Electoral Tribunal is *not for the Senate* but *for such Electoral Tribunal* as an independent and distinct entity. Therefore, those funds do not come within the power granted to the President of the Senate by section 3 of Republic Act No. 320.

7. CONSTITUTIONAL LAW; ELECTORAL TRIBUNALS; REASONS FOR THEIR INCLUSION IN ARTICLE VI OF THE CONSTITUTION.—The inclusion of the provision creating the Electoral Tribunals in Article VI of the Constitution, may be attributed to the circumstance that the settlement by said tribunals of contests relating to the election, returns and qualifications of the members of the Legislature, being a matter vitally concerned with the organization and membership of the Legislative Department, should be placed in the same article relating to that body. Such inclusion does not mean that the Electoral Tribunals are dependent upon the Legislative Department, in the same manner that the non-inclusion of the Civil Service in Article VII relating to the Executive Department does not mean that the Civil Service is independent from the executive branch of the Government.

8. ID.; ID.; THE PURPOSE OF THE CONSTITUTION IN CREATING ELECTORAL TRIBUNALS MUST NOT BE DEFEATED BY MERE MATTERS OF FORM.—The fundamental purpose of the Constitution in

creating impartial and fearless Electoral Tribunals must not be defeated by doubtful conclusions founded on mere matters of form, such as inferences from the location of certain provisions in the Constitution and from the use of possessive words which do not necessarily imply superiority. Such inferences which are vague and uncertain must yield to the vital purpose of the Constitution of safeguarding such impartiality and independence in the actuations of the Electoral Tribunals as are necessary for the effective and faithful performance of their constitutional function of ascertaining the true will of the sovereign people in connection with the true membership of the Legislative Department of the Government.

9. ID.; ID.; THE COMPARISON OF THE STATUS OF THE ELECTORAL TRIBUNALS WITH THAT OF THE COURTS OF FIRST INSTANCE IS UNTENABLE.—The comparison is not right. Although the inferior courts are to a certain extent under the control and supervision of the Secretary of Justice who is truly designated as one of the high officers of the Executive Department, yet the nature of the position of Secretary of Justice is not necessarily nor solely political. He need not be a party man. He may belong to the majority or to a minority party, or even to no party whatsoever, and there would be nothing legally anomalous in such selection. In his actuations on the administration of justice in the country, he is deemed a part and a member of our judicial system. In fact, he is usually chosen from the ranks of the judiciary, particularly from members of the Supreme Court, in order to promote confidence in his actuations with regard to the courts and to keep the impartial administration of justice with a minimum of political taint.

10. ID.; LEGISLATIVE DEPARTMENT; POSITION OF HEAD OF LEGISLATIVE DEPARTMENT, NATURE OF; HIS INFLUENCE AND CONTROL MUST BE BARRED FROM THE ELECTORAL TRIBUNALS.—He is a member of Congress by virtue of a political election and he is elected head of a house of Congress by virtue of an election by his colleagues. He is first and foremost a man of the party which has raised him to that position and he is legitimately expected to keep vigil over the interests of his party. Commendable as is this trust bestowed upon him, nevertheless, this is precisely the reason why his influence and control must be barred from an impartial and independent judicial body such as the Electoral Tribunal. Absolutely all the cases before such Electoral Tribunals constitute party interests, and it is obvious that it would be unfair to a majority party to demand aloofness and impartiality of its head in Congress in the settlement and outcome of these electoral cases, as it would be doubly unfair to a judicial entity to be under any control or supervision whatsoever of a political party head in its sacred trust of dealing impartial, untainted justice in the decision of these same cases. It is of the essence of judicial bodies that they be kept from the undue influence and control, not alone of the Legislative Department, but from all departments of the Government as well.

11. ID.; SUPREME COURT; POWER OF CHIEF JUSTICE TO DESIGNATE ASSOCIATE JUSTICES TO THE ELECTORAL TRIBUNALS; ESTABLISHED POLICY.—The Chief Justice, in the exercise of his constitutional power to designate associate justices as members of the Electoral Tribunals, has established the policy in

conformity with what he believes to be the true meaning of the Constitution, that associate justices thus designated cannot be changed by him during the periods of their incumbency except in cases of vacancy. The evident purpose is to maintain the independence of each associate justice in the performance of his duties as a member of an electoral tribunal.

12. COURTS; ISSUES THAT HAVE BEEN PERSONALIZED ARE HIGHLY DISAPPROVED BY THE COURT; CASE AT BAR.—Court deplores the fact that some issues in this case have been personalized. We highly disapprove all such statement and remarks and we have completely ignored them in the consideration of the case. This Court will be the last, if ever, to cast aspersions on the dignity, the office and the personality of any responsible official of our government, whether of an elective or appointive office.

Per PERFECTO, J., concurring:

13. POWER TO ISSUE APPOINTMENTS.—Under the rules of the Senate Electoral Tribunal, the power to issue the appointments for its employees is lodged in the Chairman. The rules have been adopted in virtue of the powers held since 1936 to be inherent in the Tribunal (Angara *vs.* Electoral Commission, 63 Phil., 137) and expressly recognized by section 182 of the Election Code.

14. APPROPRIATION IN THE SENATE FOR THE ELECTORAL TRIBUNAL.—Among the appropriations of the Senate for 1940 there is earmarked ₱180,000 for the Electoral Tribunal in line with the provision of the Election Code that all the expenses of the Tribunal and its members shall be paid from the funds of the Senate.

15. UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWER.—Paragraph 3 of the special provision of the appropriations for the Senate does not apply to the item set apart for the Electoral Tribunal and, besides, it is an unconstitutional delegation of legislative power.

16. JUDICIAL INDEPENDENCE OF THE TRIBUNAL.—All parties agree that in its judicial functions the Electoral Tribunal is completely independent. The means necessary for the performance of its functions partake of their judicial nature.

17. CONTROL OF THE FUNDS OF THE TRIBUNAL.—The Senate Electoral Tribunal has exclusive control over the funds allotted for its expenses. Whether the control of said funds imply judicial function or, as contended by respondents, an executive function, it is already settled in Government *vs.* Springer (50 Phil., 259) that the presiding officers of legislative chambers cannot exercise executive or judicial function without violating the fundamental law.

18. IMPAIRMENT OF JUDICIAL EFFICIENCY.—No tribunal can render efficient judgment in a case where one of the parties has the power over the funds of the tribunal, over the means by which it has to perform its judicial functions, or over the personnel rendering the necessary official help. An outsider controlling its funds may cripple it at will at any time.

19. DUTY OF CONGRESS.—Because of its power on the purse of the nation, Congress is duty bound to appropriate funds for the support and functioning of all the departments and officers of the government, including the Executive and Judicial departments and the Electoral Tribunals.

20. SECTION 182 OF THE ELECTION CODE.—The legislative will through said section has imposed on the Senate and on the

House of Representatives, respectively, the duty of supplying funds to the two Electoral Tribunals. The duty is to be ministerially performed by the financial officers of each house, on orders of the respective tribunals.

21. SUCCESSORS OF THE ELECTORAL COMMISSION.—The present two Electoral Tribunals are successors of the Electoral Commission of the National Assembly which functioned from 1935 up to 1941. The Second National Assembly, which drafted the constitutional amendment creating them, adopted the name tribunal because their functions are judicial in nature. The Electoral Commission was a veritable tribunal.
22. TWO SCHOOLS OF THOUGHT IN THE CONSTITUTIONAL CONVENTION.—The Constitutional Convention was divided into two schools of thought before creating the Electoral Commission, one conservative for the retention of legislative power in election protest, and the other progressive, for its transfer to a judicial body. The Electoral Commission was finally adopted, for the purpose of administering justice impartially, without fear or favor, and to do away with the injustices committed by legislative chambers in election protests.
23. SPEAKERS MONTILLA AND YULO.—Notwithstanding the fact that all the expenses of the Electoral Commission were paid with funds from the National Assembly, the Assembly has given it complete administrative control over its personnel with complete cooperation of Speakers Montilla and Yulo, of the First and Second National Assembly. No member of the National Assembly could interfere with impunity with the work of the employees of the Electoral Commission. An Assemblyman who dared to commit any irregularity in the revision of ballots was denounced to an employee of the Electoral Commission, and, upon its report, said Assemblyman was punished with expulsion by the National Assembly.
24. INDEPENDENT APPROPRIATIONS FOR THE ELECTORAL TRIBUNALS.—Since the two Electoral Tribunals started to function in 1945, we have been working to secure independent appropriations for them. No such appropriation has been made until July, 1948, when the sum of ₱180,000 was set aside for the Senate Electoral Tribunal. By failing to provide the necessary funds to their tribunals, Congress committed dereliction of national duty.
25. THE SENATE PRESIDENT HAS ACTUALLY ATTEMPTED TO CRIPPLE THE TRIBUNAL.—Upon facts stated in the opinion, the Senate President has actually attempted to cripple the work of the Senate Electoral Tribunal.
26. THE TRI-PARTITE DIVISION OF GOVERNMENT.—The traditional tripartite division of powers of government lost validity since the enactment of the Constitution, which created independent bodies with exclusive powers that do not belong to the Legislative, Executive or Judicial departments, among such bodies are the Commission on Appointments and the Electoral Tribunals.

ORIGINAL ACTION in the Supreme Court. Mandamus.

The facts are stated in the opinion of the court.

Felixberto M. Serrano for petitioner.

Solicitor General Felix Bautista Angelo for respondents.

Enrique M. Fernando & Francisco A. Rodrigo, and *Macario S. Calayag* as amici curiae.

MORAN, *C. J.:*

This is a petition for mandamus filed by Nicetas A. Suanes to compel the Chief Accountant and the Disbursing Officer of the Senate of the Philippines to pay him his salary as secretary to Senator Ramon Diokno, member of the Senate Electoral Tribunal, in accordance with his appointment issued by the Chairman of said tribunal.

The facts are as follows:

In a resolution dated June 28, 1948, the Senate Electoral Tribunal "resolved unanimously to propose the appointment" of "nine secretaries, one for each member of the Tribunal at ₱3,600 each."

On July 1st, 1948, the Secretary of the Senate, with the approval of the President of the Senate, issued to petitioner Suanes an appointment as Secretary to Senator Ramon Diokno "with compensation at the rate of ₱200 per month, the appointment to take effect on July 1, 1948, to continue until the electoral protest cases pending consideration by that body are finally disposed of, but not beyond June 30, 1949, unless sooner revoked."

On July 12, 1948, petitioner Suanes took an oath of office as Secretary to Senator Diokno, member of the Senate Electoral Tribunal.

On August 20, 1948, the Chairman of said Tribunal issued an appointment to petitioner as "Secretary to Senator Ramon Diokno, member of the Senate Electoral Tribunal, with compensation at the rate of ₱3,600 per annum, the appointment to take effect July 1, 1948."

On August 27, 1948, petitioner Suanes presented for payment to the Chief Accountant and to the Disbursing Officer of the Senate, respondents in this case, a general voucher certified by the Secretary of the Senate Electoral Tribunal and approved by its Chairman, covering petitioner's salary from July 1, 1948, to August 15, 1948, at the rate of ₱300 per month. The respondents refused to honor said voucher and alleged that they were authorized to pay petitioner Suanes only the salary fixed in the appointment issued by the Secretary of the Senate and approved by the President of the Senate, namely, at the rate of ₱200 per month.

It appears that in Republic Act No. 320, in the appropriation for the Senate there is included the sum of ₱180,000 for the expenses of the Electoral Tribunal for the Senate. The President of the Senate has the power to appoint the employees of the Senate according to sections 79 and 88 of the Administrative Code. Upon the other hand, in the rules approved and promulgated by said Electoral Tribunal for the effective performance of its constitutional functions, the power of appointment of its subordinate personnel is lodged in its chairman with the approval of the Tribunal. These seems to be no ques-

tion as to the authority of the Tribunal to promulgate said rules as is expressly recognized by section 182 of the Election Code.

The question before the court is—which of the two appointments should prevail, whether the appointment issued by the President of the Senate or that issued by the Chairman of the Electoral Tribunal. This question depends upon the broader issue of whether the Electoral Tribunals, as created by the Constitution, are mere agencies of the Philippine Congress, or they are entities distinct from and independent of the Philippine Congress to the extent of possessing complete control of their internal affairs.

Our Constitution has unqualifiedly reposed upon the Electoral Tribunal the responsibility of being the "sole judge of all contests relating to the election, returns and qualifications" of the members of the legislative houses. We have ruled unequivocally in the case of Angara *vs.* Electoral Commission, 63 Phil., 139, that the Electoral Tribunals are *independent* constitutional creations with specific powers and functions to execute and perform and the avowed purpose in creating them is to have *independent* constitutional organs pass upon all contests relating to the election, returns and qualifications of members of the Congress, devoid of partisan influence or consideration, which object would be frustrated if Congress were to retain that power. The purpose of the Constitution—we said—was to transfer in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members, to an *independent* and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long-felt need of determining legislative contests *devoid of partisan considerations* which prompted the people, acting through their delegates to the Convention, to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the Supreme Court." And the Court concluded that an electoral tribunal "is a body separate from and independent of the Legislature."

Considering then that the Electoral Tribunals are constitutional creations, designed as bodies distinct from and independent of the Congress, so that they may carry out their constitutional mission with independence and impartiality, it follows that within the precise sphere of their functions, they are as sovereign over their internal affairs as are each of the other powers of government over their

respective domains. Consequently, the employees of an Electoral Tribunal are its own, and not of the Senate nor of the House of Representatives nor of any other entity, and it stands to reason that the appointment, the supervision and the control over said employees rest wholly within the Tribunal itself. The President of the Senate may have the power to appoint the employees of the Senate, but there is no existing provision of law, even in the Appropriation Act, which vests in him the power to appoint the employees of an Electoral Tribunal. Upon the other hand, in paragraph 4 of the Rules of the Electoral Tribunal for the Senate, approved in 1947, it is provided, among other things, that the Chairman thereof shall have the power to appoint the employees of the Tribunal "with the approval of the Tribunal, and in accordance with the provisions of the Civil Service Law." The adoption of said rules is in conformity with section 182 of the Election Code and in harmony with the intention of the framers of the Constitution in creating independent Electoral Tribunals.

The fact that the appropriation for the Senate Electoral Tribunal is included in the budget corresponding to the Senate, does not and cannot mean that the employees of the Electoral Tribunal are also employees of the Senate, for both institutions are separate and independent of each other under the Constitution. Such inclusion is due merely to section 182 of the Election Code which provides that expenses of the Electoral Tribunals shall be paid from the funds of the respective houses of the Congress, not because said tribunals are dependencies of Congress, but because as separate and independent bodies they are designed to try and settle issues for the benefit of Congress.

This view was supported by the late President Manuel A. Roxas who had been a prominent member of the Constitutional Convention. Mr. Justice Parás recounted the following in his speech delivered during the necrological services for the late President Roxas—

"Very shortly before his death, in a conference wherein the matter relating to the administrative personnel of the Senate Electoral Tribunal was taken up, President Roxas supported the stand that said personnel should be named by, and under the control of, the members of the Tribunal with a view to making it an independent constitutional body in all respects. He accordingly recommended the inclusion in the next Budget of an appropriation for the Electoral Tribunals, unattached to and separate from the outlays for the Congress. As this recommendation was made some thirty-six hours before President Roxas died, it may well be treated as his last will, unmistakably expressive of the kind of judiciary he wanted his country to have."

Respondents proffer section 3 of the Appropriations Act for 1948 (Republic Act No. 320) in support of their argument that "the intention of Congress is to place the

Electoral Tribunal under the control and supervision of the heads of the two bodies of Congress not only with regard to its administrative functions but specially with regard to the disbursement and disposition of the funds appropriated for it." The pertinent sections reads as follows:

> "3. Any provision of existing law to the contrary notwithstanding, the President of the Senate is hereby authorized, within the limits of the appropriations authorized in this Act for the Senate, to transfer items of appropriations, to abolish or consolidate items or positions, and to create new items or positions as may be necessary to effect simplification, ecenomy and efficiency in the service, whenever in his judgment the public interest so requires." (Special Provisions No. 3, Appropriation for the Senate, Rep. Act No. 320, p. 10.)

Whatever power is conferred upon the President of the Senate under this provision of law is specifically qualified and confined—"within the limits of the appropriations authorized in this Act *for the Senate.*" But the appropriation for the Senate Electoral Tribunal is *not for the Senate* but *for such Electoral Tribunal* as an independent and distinct entity. Therefore, those funds do not come within the power granted to the President of the Senate by section 3 of Republic Act No. 320. There is no other logical conclusion. The mere fact that the funds of the Senate Electoral Tribunal are to be taken from the funds of the Senate do not make those funds *for* the Senate. Precisely, when the law (Revised Election Code, section 182) provides that the expenses of the Senate Electoral Tribunal are to be paid from the funds of the Senate, it separates the amount of those expenses and takes it out of the Senate funds and, therefore, out of the control of the President of the Senate. If the Senate President can control the appropriated funds for such expenses, he can control those expenses. If he can control such expenses, he can influence the actuations and command the very subsistence of the Tribunal, thus defeating its independence and its existence in violation of the Constitution.

Respondents maintain that the constitutional provision creating the Electoral Tribunals and defining their powers appears in section 11 of Article VI of the Constitution which refers to the Legislative Department, and from this they infer that said tribunals are thus intended as parts of the Legislature. And this is alleged to be corroborated by the language of said section 11 of Article VI of the Constitution which provides that "the Senate and the House of Representatives *shall each have* an Electoral Tribunal. * * *" Since these tribunals, as elsewhere adverted to, were created by the Constitution as separate and independent organs so that they may perform their constitutional functions with independence and impartiality completely devoid of partisan influence

or consideration, the topographical location of section 11 in Article VI of the Constitution becomes innocuous and immaterial and the words "shall each have" above referred to can have no other meaning than that the houses of Congress are each provided with independent constitutional organs to settle issues pertaining to Congress which, in the eyes of the Constitution, Congress cannot adequately decide. It may be said furthermore that the inclusion of the provision creating the Electoral Tribunals in Article VI of the Constitution, may be attributed to the circumstance that the settlement by said tribunals of contests relating to the election, returns and qualifications of the members of the Legislature, being a matter vitally concerned with the organization and membership of the Legislative Department, should be placed in the very same article relating to that body. Such inclusion does not mean that the Electoral Tribunals are dependent upon the Legislative Department, in the same manner that the non-inclusion of the Civil Service in Article VII relating to the Executive Department does not mean that the Civil Service is independent from the executive branch of the Government.

The fundamental purpose of the Constitution in creating impartial and fearless Electoral Tribunals must not be defeated by doubtful conclusions founded on mere matters of form, such as inferences from the location of certain provisions in the Constitution and from the use of possessive words which do not necessarily imply superiority. Such inferences which are vague and uncertain must yield to the vital purpose of the Constitution of safeguarding such impartiality and independence in the actuations of the Electoral Tribunals as are necessary for the effective and faithful performance of their constitutional function of ascertaining the true will of the sovereign people in connection with the true membership of the Legislative Department of the Government.

Respondents maintain that the constitutional independence of the Electoral Tribunals has reference only to their judicial functions, but not to the selection of their administrative personnel. This distinction finds absolutely no support either in the provisions of the Constitution or in our statutes. As above indicated, under the Constitution, the Electoral Tribunals must be independent because they are created to settle with absolute impartiality partisan issues between members of Congress. If it is conceded that their actuations should be absolutely free from partisan considerations, it must follow that the Electoral Tribunals must be independent not alone when they are deciding cases before them, but also when they are selecting their personnel which will aid them in the performance of their duties and when they are disposing of their

funds for their necessary expenses. The selection of such personnel and the disposition of such funds have a substantial bearing upon the judicial functions of the Electoral tribunals. If they may be forced to accept employees who deserve no trust from them and they may be dictated to in the disposition of their funds, the integrity of their proceedings and the correctness of their decisions may easily be impaired and defeated.

Respondents compare the status of the Electoral Tribunals with that of the Courts of First Instance which, although pertaining to the Judicial Department, are nevertheless administratively subject to the Executive Department through the Secretary of Justice. The comparison is no right. Although the inferior courts are to a certain extent under the control and supervision of the Secretary of Justice who is truly designated as one of the high officers of the Executive Department, yet the nature of the position of Secretary of Justice is not necessarily nor solely political. He need not be a party man. He may belong to the majority or to a minority party, or even to no party whatsoever and there would be nothing legally anomalous in such selection. In his actuations on the administration of justice in the country, he is deemed a part and a member of our judicial system. In fact, he is usually chosen from the ranks of the judiciary, particularly from members of the Supreme Court, in order to promote confidence in his actuations with regard to the courts and to keep the impartial administration of justice with a minimum of political taint. It is true that, from time to time, this situation of an Executive official being burdened with direct intervention in the administration of the courts, has been the object of appraisal and criticism by certain members and groups of the legal profession who offer the remedy of transferring the administration of courts to the Supreme Court. Whatever may be merits of such criticsm and proposal, which we do not in the least consider in this case, it must be noted, however, that the tendency is towards assuring the independence of judicial tribunals.

On the other hand, none of these considerations apply to a head of the Legislative Department who holds an essentially political position. He is a member of Congress by virtue of a political election and he is elected head of a house of Congress by virtue of an election by his colleagues. He is first and foremost a man of the party which has raised him to that position and he is legitimately expected to keep vigil over the interests of his party. Commendable as is this trust bestowed upon him, nevertheless, this is precisely the reason why his influence and control must be barred from an impartial and independent judicial body such as the Electoral Tribunal. Abso-

lutely all the cases before such Electoral Tribunals constitute party interests, and it is obvious that it would be unfair to a majority party to demand aloofness and impartiality of its head in Congress in the settlement and outcome of these electoral cases, as it would be doubly unfair to a judicial entity to be under any control or supervision whatsoever of a political party head in its sacred trust of dealing impartial, untainted justice in the decision of these same cases. It is of the essence of judicial bodies that they be kept from the undue influence and control, not alone of the Legislative Department, but from all departments of the Government as well.

It may be stated, in this connection, that the Chief Justice, in the exercise of his constitutional power to designate associate justices as members of the Electoral Tribunals, has established the policy in conformity with what he believes to be the true meaning of the Constitution, that associate justices thus designated cannot be changed by him during the periods of their incumbency except in cases of vacancy. The evident purpose is to maintain the independence of each associate justice in the performance of his duties as a member of an Electoral Tribunal.

In closing, it may be stated that this Court deplores the fact that some issues in this case have been personalized. We highly disapprove all such statements and remarks and we have completely ignored them in the consideration of the case. This Court will be the last, if ever, to cast aspersions on the dignity, the office and the personality of any responsible official of our government, whether of an elective or appointive office.

In view of all the foregoing, the appointment issued to petitioner by the Chairman of the Electoral Tribunal, "at the rate of ₱3,600 per annum," should prevail. The writ of mandamus is hereby granted and the respondents are ordered to honor and to pay the voucher issued in favor of petitioner as certified by the Seceretary of the Senate Electoral Tribunal and approved by its Chairman. No costs.

Feria, Pablo, and *Bengzon, JJ.,* concur.

Perfecto and *Briones, JJ.,* concur, besides their separate opinions.

Montemayor, J., concurs in the result.

OZAETA, *J.,* abstaining:

This case having been argued and voted before I became a member of the Court, I had no opportunity to take part in the deliberation and to express an opinion.

PERFECTO, *J.,* concurring:

Petitioner seeks the collection of his salaries in arrears as private secretary to Senator Ramon Diokno, one of the

members of the Seneate Electoral Tribunal. He has been duly appointed by Mr. Justice Parás, Chairman of the Tribunal, which authorized the appointment and fixed the salary for the position of ₱300 a month.

Under the rules of the Tribunal, the power to issue the appointment is lodged in its chairman. The rules have been adopted in virtue of the powers held since 1936 to be inherent in the Tribunal (Angara *vs.* Electoral Commision, 63 Phil., 139), and expressly recognized by section 182 of the Election Code, which provides that the Tribunal shall have the power "of making the necessary rules for the effective performance" of its constitutional functions.

Petitioner's salaries are charged against the sum of ₱180,000, set aside by the current appropriation act for the expenses of the Senate Electoral Tribunal.

Respondents refused and are refusing to pay the salaries. Their ground is that said salaries are not authorized by the Senate President who, according to them, is the official authorized to handle and dispose of all the appropriation for the Tribunal.

The amount in question has been included among the appropriations of the Senate, although specifically earmarked for the Tribunal, in line with the provision of section 182 of the Election Code, that all the expenses of the Tribunal and its members "shall be paid from the funds" of the Senate.

The appropriation of ₱180,000 in question is the first of four items for "Special Purposes" in the appropriations for the Senate, which reads:

"IV.—SPECIAL PURPOSES

"1. For the personnel and expenses of the Senate Electoral Tribunal, its members, commissions, delegates and helpers	₱180,000
"2. For traveling and other expenses of the President of the Senate, the Senate Committees and subordinate personnel *when authorized by the President of the Senate to undertake* studies in and outside of the Philippines	150,000
"3. For other services, including transportation and additional secretarial services for the members of the Senate, or expenses incurred *by direction of the President of the Senate*	160,000
"4. For the alteration, repair and maintenance of the offices of Senators in the City Hall, including the maintenance of one elevator	70,000
"Total for special purposes	₱560,000"

(Italics supplied.)

A comparison of the four items will show right away that, when the intention of the law is to grant the Senate President the power over the expenditure, it says so expressly, as can be seen from the underlined words in

items 2 and 3. That intention does not appear in item 1, the one for the Senate Electoral Tribunal.

Paragraph 3 of the Special Provisions of the Appropriations for the Senate is invoked by respondents in support of their theory upholding the Senate President's authority over the item in question. Said special provision reads as follows:

"3. Any provision of existing law to the contrary notwithstanding, the President of the Senate is hereby authorized, within the limits of the appropriations authorized in this Act for the Senate, to transfer items of appropriations, to abolish or consolidate items or positions, and to create new items or positions as may be necessary to effect simplification, economy and efficiency in the service, whenever in his judgment the public interest so requires."

Without entering into any discussion of the validity of the tremendous delegation of legislative powers involved,—to our mind, the delegation is clearly unconstitutional,—everybody may see that the scope of the provision is limited to the appropriations of the Senate, which does not include the Electoral Tribunal, a body that, in the contemplation of the framers of the Constitution, is separate and independent from all other departments of government.

According to the Constitution, the Tribunal shall be the "sole judge" of the protests under its exclusive jurisdiction. The exclusiveness implied in the adjective "sole" is self-evident.

All parties agree that in its judicial functions, the Tribunal is completely independent. The performance of judicial functions needs means, in personnel and in materials. Judicial functions have to be recorded, and paper is indispensable for their recording. Judicial functions entail processes that need to be executed by officers and employees of the Tribunal. Because such means are necessary for the performance of judicial functions, they have to partake of their judicial nature. The function of authorizing or ordering expenditures from the appropriation for the Senate Electoral Tribunal is judicial in character. As such, it has to belong exclusively to the Tribunal.

The functions of the Tribunal which are strictly judicial, cannot be separated from the executive, administrative, or financial functions indispensable for the exercise of those which are strictly judicial. When the Constitution granted the Tribunal the power of a "sole judge," it gave it that power complete, including the executive, administrative and financial powers which are accessory and complementary to the power to judge.

The silence of the Appropriations Act as to who has the power to authorize expenditures against the item of ₱180,000 for the Senate, must be interpreted in line with the Constitution and in a way that will not defeat its pur-

poses. That interpretation cannot be other than to give the Tribunal the exclusive power as to how the funds in question must be used and spent.

The interpretation that respondents propose to adopt is violative of the fundamental law. It is elementary in statutory construction that such interpretation must be avoided when there is another compatible with the Constitution.

The authority that they would give to the Senate President to control the funds in question is expressly described by the respondents as a function executive in nature. It is already settled by the decision of this Supreme Court in Government *vs.* Springer (50 Phil., 259), that the presiding officers of legislative chambers cannot exercise executive or judicial functions without violating the fundamental law.

To give to the Senate President power to control the use and expenditure of the appropriation for the Senate Electoral Tribunal is contrary to the very nature of things and highly inimical to public interest, to principles of good government, to the tenets of elemental morality. Respondents admit that it is possible for the Senate President to be one of the protestees in a case before the Senate Electoral Tribunal. There is no more effective control by any person or body of persons than control in the money they need. No Tribunal can render efficient judgment in a case where one of the parties has the power over the funds of the Tribunal, over the means by which it has to perform its judicial functions, over the personnel rendering the necessary official help. No one can deny that an outsider controlling the funds of the Tribunal may cripple it at his will at anytime, or block it effectively from the exercise of its judicial functions.

Congress, by its power on the purse of the nation, is duty bound to appropriate funds for the support and functioning of all the departments and offices of the government. It has the duty of providing funds, not only for its two houses, but for the executive and judicial departments, not only for one office but for all the offices of the government, without any exception. One of the permanent bodies created by the Constitution in the government set-up is the Senate Electoral Tribunal. Congress must provide it with funds in the same way that it has to appropriate funds for the Supreme Court.

Through section 182 of the Election Code, the legislative will imposes on the Senate and on the House of Representatives respectively the duty of supplying funds to the two Electoral Tribunals. The duty of the Senate to provide funds to the Senate Electoral Tribunal is to be ministerially performed by the financial officers of the Senate, on orders of the Tribunal. They have the minis-

terial duty of paying the salaries of the personnel of the Tribunal and all the expenses that the Tribunal may provide. Respondents are such financial officers.

The conclusion is inevitable that petitioner's prayer must be granted and that respondents should be ordered to pay, without delay, petitioner's salaries as fixed in his appointment issued by the Chairman of the Senate Electoral Tribunal, pursuant to the authority given by said body. Respondents shall pay the costs.

The present Electoral Tribunals have been created through constitutional amendment introduced by the Second National Assembly and duly ratified by the country's electorate. They were created as a necessary consequence of the constitutional amendment creating Congress, the present bicameral legislature composed of the Senate and House of Representatives, in substitution of the unicameral National Assembly created in the original text of the Constitution and which has functioned from 1935 up to 1941. They are the successors of the Electoral Commission which functioned during the existence of the National Assembly.

The Second National Assembly could have aptly named the two tribunals as the Senate Electoral Commission and House Electoral Commission, because their composition, organization and functions are substantially the same as those of the Electoral Commission which they have replaced. But the Second National Assembly, with complete deliberation, accepted the proposition of some members, one of them the writer of this opinion, that each one of the new bodies be named Electoral Tribunal, for the evident connotation of the last word. As correctly stated by Mr. Justice Abad Santos, later Chief Justice, in his concurring opinion in Angara *vs.* Electoral Commission (63 Phil., 184), the power vested in the Electoral Commission by the Constitution "is judicial in nature." The Electoral Commission was a veritable tribunal. Its functions were essentially the same as those entrusted to any court of justice with limited jurisdiction. But, why did the Constitutional Convention name it Electoral Commission instead of Electoral Tribunal?

As truthfully stated by authors of books on Philippine Constitution, the members of the Constitutional Convention were divided by two schools of thought. One side was conservative, and wanted to retain in the legislative chambers the power to judge contests on the election and qualifications of their respective members. The other side was progressive and urged the transfer of said power to tribunals. We belonged to the last. We were convinced that the traditional system of legislative administration of justice was fundamentally wrong and had to be discarded if we were to eliminate one of the strongest causes of revolution.

Since we took interest in public affairs, we learned that injustice, partiality, blind partisanship were the rule in the disposal of protests by legislative bodies. That knowledge was only strengthened by our personal and direct experience, when, in the practice of the law profession, we handled legislative protests in the pre-Commonwealth Senate and House of Representatives, and during our membership in the latter for two consecutive terms. Of course, the minority members have always insisted on the impartial appraisal of the facts and the application of the law, and that justice should be the only consideration to be taken, but the majority members found always pretexts to defeat, in the sacred name of justice, the true will of the people and to wantonly trample down the rights of the minority. Even now we cannot avoid shuddering upon the mere memory of the iniquities that have been committed and how, with the same rulings, the majority candidates were usually proclaimed triumphant and the minority candidates declared defeated.

As a matter of justice, we may state that there had been magnificent exceptions, in which real justice has been administered. The whole country may yet remember how the election contest affecting the sixth senatorial district was disposed of by the pre-Commonwealth Senate, under the courageous and dramatic leadership of President Quezon. No one could then complain of the annulment of one of the most scandalous elections. Again, when the election of Senator Alejo Mabanag, member of the opposition Democrata Party, was contested, and the majority was about to railroad his ouster, to be replaced by the majority candidate who was defeated by him at the polls, to stop impending injustice, Senate President Quezon, as he himself recounted to us the dramatic incident, upon receiving the information from Senator Veloso, rushed from his sickbed to the Senate to successfully frustrate the iniquity.

These two outstanding exceptions served only to emphasize the unbearable general situation, prompting us to stage a relentless campaign through the press and public meetings for the transfer of the power to judge legislative protests to the Supreme Court, then the only Tribunal from which justice could be expected in litigations involving powerful politicians and the political party controlling the government.

We could not propose that the cases be transferred to the cognizance of inferior courts, which were subject to political influence that deprived them of the independence indispensable for an impartial, upright and courageous administration of justice. They were, as they are now, under the administrative supervision and control of the Secretary of Justice, a political official, who, in turn, was

under the direct influence of the majority members, of the most powerful political leaders in the government, the majority of them always bent on seeking to seat their party's candidate without any discrimination as to means.

The conviction we have been entertaining during the last fourth of a century that the administrative control of the Secretary of Justice over inferior courts is not satisfactory, from the point of view of an independent and fearless administration of justice, is fast gaining ground, as shown by the movement started by two prominent majority Senators, seeking the transfer of said administrative control to the Supreme Court.

The clash between the two schools of thought in the Constitutional Convention was long and hard. Finally the two camps entered into a compromise which no one could fail to accept. Those who were advocating for the retention by legislatures of the power to try election protests could not reject a proposal for the creation of a body with a membership two-thirds of which were members of the legislature. Those of us who were in the opposing camp, agreed to the proposal because the six legislative members were to be equally divided between the majority and the minority. Should they happen to vote following party lines, the balance of power would have been placed in the hands of the three Justices. Were they to act as true judicial officers, as it was their duty, there was no harm even if they should outvote the three Justices, because, regardless of the result, all would have acted according to the dictates of their own conscience. Thus we created the Electoral Commission, which, notwithstanding its legislative majority, could and actually function independently from the National Assembly. So as not to hurt the feelings of those of the legislative school, we, of the judicial school, agreed to name it Commission.

The fact that the provision for its creation was placed under the title of the legislative department neither affects its independent character nor made it an integral or organic part of the National Assembly. It is a matter of form that does not affect the substance. The Convention placed the provision creating the Electoral Commission where it was placed because the limited jurisdiction granted to it had a direct bearing with the membership of the National Assembly.

The Constitutional Convention created also two other separate and independent bodies, the Commission on Impeachment and the Commission on Appointments. Each one, in the exercise of the constitutional powers granted to it, was completely independent from the National Assembly. The provisions regarding them were, notwith-

standing, placed also under the title of the Legislative Department, because of the intimate relationship regarding their memberships. Because all their members were also members of the National Assembly, they functioned effectively without separate means, which they could have dispensed with entirely in view of the nature of their tasks. It was, therefore, of no moment that their negligible personnel was appointed by the Speaker.

The Commission on Impeachment was abolished with the creation of the bicameral Congress, its functions having been transferred to the House of Representatives. The Commission on Appointments was retained, and it continues to be an independent body, separate from the Senate and from the House of Representatives.

There is no question that the Electoral Tribunals are independent in their judicial functions. Respondents say so in so many words, adding that "such was the intention of the framers of our Constitution in creating the original Electoral Commission for the National Assembly." But they allege, upon inaccurate information or erroneous knowledge of facts, that it never occurred to the members of the National Assembly, many of whom were delegates to the Constitutional Convention, that the independent judicial power granted to the Electoral Commission carried with it complete administrative independence and organic separation from the legislative department. They assert that from the very beginning, the subordinate personnel of the commission were appointed by the Speaker and its expenses were paid out of the Assembly funds, and not a single voice of protest was raised against this state of affairs and everyone concerned or affected acquisced in the arrangement.

We are in a position to state the truth on the matter. We have been one of the delegates to the Constitutional Convention, one of the members of the two National Assemblies, and one of the members of the Electoral Commission during its existence. From the very beginning we have been trying hard to secure separate appropriations for the Electoral Commission. The National Assembly and, especially, the Committee on Appropriations, of which we were also one of the members, were fully acquainted with our efforts. We failed because of jealousy. The majority of the other members of the National Assembly would not permit that the six assemblymen, members of the Electoral Commission, with the separate appropriation, could enjoy a wider power of patronage with the appointments of the personnel of the Electoral Commission. They insisted on enjoying equal opportunity in obtaining the appointments of their recommendees. They wanted that whatever personnel the Electoral Commission may need, be drawn from persons appointed by the

Speaker, who was equally accessible to all the members of the National Assembly. I was assured, notwithstanding, that the Electoral Commission will not suffer for any lack of personnel or of funds for all its expenses. The assurance proved to be true for all practical purposes.

All the expenses of the Electoral Commission were paid with funds from the National Assembly. The commission was provided with all the personnel we needed. The arrangement worked satisfactorily under the special circumstances then prevailing. Although there was still pre vailing the division of pros and antis, all the members of the National Assembly belonged to one single national political party. Given by the Assembly administrative control over our personnel, we were able to free all our employees from all undue influence and they performed their duties with complete loyalty to the commission. We enjoyed, in this respect, the complete cooperation of Speakers Montilla and Yulo, who presided respectively over the two National Assemblies, and the strictly judicial attitude adopted by the legislative members of the Electoral Commission commanded the respect even of the other members of the Assembly who were protestees. No one dared to illegally interfere with or influence our employees, because everybody knew that the guilty one would have been punished. As a matter of fact, a protestee who dared to commit an irregularity in the revision of ballots, was denounced by an employee to the commission and, upon the commission's report, said protestee was punished with expulsion by the National Assembly.

Although the arrangement worked satisfactorily, and for said reason no one voiced any protest, it was a known fact that we have never been agreeable to the arrangement. We accepted it as inevitable, but we have always expressed our opinion that separate and independent appropriation should have been voted for the Electoral Commission.

We were not alone to entertain such an opinion. The same was shared by other members of the Electoral Commission, including those who have been delegated to the Constitutional Convention, among them, Mr. Justice Claro M. Recto, the President of the Convention, and Mr. Justice Jose P. Laurel, the Chairman of the Committee on Bill of Rights. President Roxas, who was also a delegate to the Convention and then was also a member of the National Assembly, was also of the same opinion.

At the Roxas' necronological service held at Malacañan Palace in April, 1948, the then Acting Chief Justice Ricardo Parás, solemnly said in his oration regarding the late President the following:

"Very shortly before his death, in a conference wherein the matter relating to the administrative personnel of

the Senate Electoral Tribunal was taken up, President Roxas supported the stand that said personnel should be named by, and under the control of, the members of the Tribunal with a view to making it an independent constitutional body in all respects. He accordingly recommended the inclusion in the next Budget of an appropriation for the Electoral Tribunals, unattached to and separate from the outlays for the Congress. As this recommendation was made some thirty-six hours before President Roxas died, it may well be treated as his last will, unmistakably expressive of the kind of judiciary he wanted his country to have.

"President Roxas could not have pursued a different course of action towards the judiciary, because, as he himself postulated in his message to the Congress three months ago, 'We will continue to enjoy our liberties so long as we have independent courts and courageous judges who will relentlessly battle for the preservation of those liberties.' "

In line with the same conviction, since they started to function in 1945 the year of their first organization, we have been working to secure independent appropriations for the two Electoral Tribunals. We even prepared a budget for Commissioner Mathay of the Budget. We wanted it to be submitted by President Osmeña to Congress, but we failed to convince the good commissioner that an independent appropriation should be allotted to the Electoral Tribunal.

There is no sensible ground for respondents' position that, under the section 182 of the Election Code and the last two Appropriation Acts Nos. 156 and 320, Congress assumed that the Electoral Tribunals are organic parts of the Senate and of the House of Representatives, respectively, because of the mere fact that the expenses of the Tribunals are to be taken from the funds appropriated for each chamber. At any rate, Congress is the one organ of government duty bound to provide with funds the Electoral Tribunals as well as all other departments, branches and organs of the government. The Constitution has entrusted to Congress the authority and duty of appropriating public funds for said purpose, a function essentially legislative in nature. But even if Congress had made the assumption attributed to it by respondents, such assumption cannot have any weight because it is violative of the letter and the spirit of the Constitution.

Respondent's statement to the effect that since liberation the Electoral Tribunals continued to be treated as organic parts of Congress, under the administrative supervision of their respective presiding officer, may only be based on the subjective personal attitude of said presiding officers, but neither one of the two Electoral Tribunals has ever accepted such administrative supervision.

No independent appropriation has been made by Congress for the Electoral Tribunals until the sum of ₱180,000 was lately set aside for the Senate Electoral Tribunal. The two Tribunals had to resign themselves to the use of any personnel that the legislative chamber could lend them, but both tribunals have always resented the scandalous dereliction of national duty committed by Congress, in failing to provide the necessary funds for the efficient function of the Tribunals, so much so that we could not avoid denouncing such dereliction in speeches we delivered months ago.

The allegation that at no time did any one suspect that the Electoral Tribunals would declare their independence from Congress on administrative matters, until the President of the Senate scaled down the proposed salary of the secretary to a member of the Tribunal, is not based on fact. As soon as the appropriation in question had been approved, the Senate President gave assurance to a Senator, member of the Senate Electoral Tribunal, that the latter will enjoy complete free hand in the expenditure of the fund. In line with said commitment, which was communicated to all the members of the Tribunal, the Chairman addressed to the Senate President, a letter dated July 1, 1948, copy of which is attached to the record. Contrary to his commitment, the Senate President refused to give effect to almost all the items proposed in said communication.

Efforts have been made to carry out the resolution of the Tribunal as embodied in the communication sent by its Chairman, but the Senate President insisted in refusing to honor his word.

The difference between the salaries for personnel approved by the tribunal and those which the Senate President would pay, is dismissed by the respondents (who take a narrow point of view) as such a "petty difference" as not to be the rallying point for those who advocate administrative independence for the Electoral Tribunals.

Of course, if the amount of more or less pesos is to be taken as the standard of measurement, its pettiness would easily be manifest, but that would be missing the point. The difference between the Tribunal and the Senate President must be measured in terms of the basic principles involved: judicial independence of the Tribunal, untrammeled administration of justice, unfettered control of the means needed to perform constitutional functions, public trust and confidence in the Tribunal, clean and honest senatorial elections, delimitation of constitutional functions, democracy or dictatorship, effectiveness of the Constitution. Only by taking into consideration the great principles directly involved in the controversy can any one take the proper perspective, and see that the difference

cannot be enclosed in a thimble because it would even overflow the vastness of a geographical continent.

Respondents have absolutely no basis to assume that their position can find any support in the attitude of the two National Assemblies or that of the delegates to the Constitutional Convention, or in the attitude of the Electoral Commission or of the Justices of the Supreme Court who had acted as members thereof.

One argument in support of respondents' position is the idea of possessiveness in the words "shall each have" of section 11, Article VI of the Constitution. But this method of interpretation is violative of the elemental principle of legal hermeneutics that commands that all the parts of a legal text should be interpreted in relation with the rest, not as isolated and independent units. The main idea in the whole section in question is embodied in the following words: "shall be the sole judge of all contests." That idea is characterized by the exclusiveness implied in the adjective "sole." Reason advises us that to be "sole judge," the Tribunals must have to enjoy complete independence, not only in the direct performance of their judicial functions, but in the control of the means, financial or administrative, they need for the performance of their judicial functions.

Respondents' theory that the Tribunals are organic parts of the Senate and House of Representatives, respectively, may be met by their own reference to the fact that the Electoral Tribunals are jointly mentioned in section 13 of Article VI of the Constitution with the Commission on Appointments, which they describe as "another new constitutional body." Their assumption that the Commission on Appointments is an organic part of the Senate, House of Representatives, or Congress, has no validity in the face of their own admission that the Commission on Appointments is another "new constitutional body," the description being evidently incompatible with that of a mere organic part of other constitutional bodies such as the Senate or House of Representatives.

That the Commission on Elections and the General Auditing Office are created under two separate articles of the Constitution, X and XI, does not make the Electoral Tribunal less independent. By their respective nature and functions, the Commission on Elections and the General Auditing Office have no close connection with the two legislative chambers.

Perhaps it would have been better to dedicate separate articles, one to the Electoral Tribunals and the other to the Commission on Appointments. This is a matter of form upon which honest differences of opinion may be legitimately entertained according to the literary culture and tastes of anyone. But because the Constitutional Con-

vention adopted a form with which we may disagree now, that is not a reason for closing our eyes to the realities of the substance, to the ideological contents of the present text, to what the authors really meant.

The provision in section 10 (3) of Article VII of the Constitution, permitting Congress to vest by law in the President the power to appoint inferior officers, including subordinate personnel of the judiciary, holds no strength as argument against petitioner's position. The Constitutional Convention entertained no fear that appointments by the President could impair judicial independence, because it had the conviction that the President of the Philippines would not violate the obligations exacted from him by the oath provided by section 7 of Article VII, to preserve and defend the Constitution, execute the laws and "do justice to every man." Besides, in practice, although the President would attempt to exert an undue influence on the subordinate personnel of the judiciary, it would be impossible for him to achieve such purpose as the magnitude and number of official matters he has to attend to would not give him time to pay attention to so many subordinate personnel.

Respondents allege that the Senate President has not done one single act that has actually prevented the Senate Electoral Tribunals from performing its functions but do not deny that the Senate President has refused to pay petitioner the salary of ₱300 fixed by the Senate Electoral Tribunal, because he had reduced it to ₱200. They also admit that the Senate President has appointed guards for ballot boxes without the consent or knowledge of the Senate Electoral Tribunal. May these acts of the Senate President not be considered as an omen of how he may cripple the Tribunal? Respondents admit the possibility of a Senate President being involved as one of the protestees in a contest under the jurisdiction of the Tribunal. They also admit that in the pending protest, where seven of his fellow Liberal Senators are the protestees, the Senate President's leadership in the Senate is involved, as if in case said protestees should lose, he will also lose said leadership. Everybody knows that there are many who resort to fraud and illegality to retain the mayoralty even in the most insignificant town of the country. The position of President of the Senate, being one of the most exalted in the government, second only to the President of the Philippines in the magnitude of political power, would it be surprising that he, without resorting to any fraud or illegality, should deny the Senate Electoral Tribunal the necessary means for it to proceed with the trial of the pending protest, thus closing all doors to eventuality of the protestees' defeat in the case and his loss of leadership in the Senate?

Legal traditions, the same as social traditions, when running into conflict with the times of progress, had to give way to new concepts that will establish the traditions for the future. Man is not stagnant. It cannot afford to be stagnant. It has to progress if it has to survive.

The traditional tri-partite division of the powers and departments of government has given way to the new legal concepts recognized by the Constitutional Convention that it embodied in the fundamental law, and it is our duty to accept such concepts and not to cringe on outworn legal ideas.

The three departments, executive, legislative and judicial, in which Aristotle and Montesquieu had divided and among which distributed all the powers of government, under our constitutional set up, cannot embrace anymore all our government offices and agencies. Profiting by the lessons of national political experience, the drafters of our Constitution could have not held fast to the classical tri-partite division. They created independent bodies, with powers of their own, separate from the three traditional departments. Among them are the Commission on Appointments and the two Electoral Tribunals. These Tribunals do not belong either to the legislative or judicial departments, much less to the executive. They are independent powers by themselves. The majority of their members are members of Congress and their functions are judicial in nature, but they are not subordinate either to Congress or any of its houses or to the Supreme Court. In the official hierarchy, they occupy the same top level in government occupied by the President of the Philippines, Congress and the Supreme Court.

"The judiciary is one of the coordinate branches of the Government. * * * Its preservation in its integrity and effectiveness is necessary to the present form of Government. * * * It is clear * * * that each department is bound to preserve its own existence if it is to live up to the duty imposed upon it as one of the coordinate branches of the government. * * * Therefore, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of Government. Courts have, therefore, inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice. This is clear; for, if the judiciary may be deprived of any one of its essential attributes, or if any one of them may be seriously weakened by the act of any person or official, then independence disappears and subordination begins. The power to interfere is the power to control, and the power to control is the power to abrogate. The sovereign power has given life to the judiciary and nothing less than the sovereign power can take it away or render it useless. The power to withhold from the courts anything really essential for the administration of justice is the power to control and ultimately to destroy the efficiency of the judiciary. Courts cannot, under their

duty to their creator, the sovereign power, permit themselves to be subordinated to any person or official to which their creator did not itself subordinate them." (Borromeo *vs.* Mariano, 41 Phil., 322, 331, 332.)

Respondents admit that the Senate President may paralyze the work of the Senate Electoral Tribunal, and the paralyzation of the Tribunal means miscarriage of justice and flagrant betrayal of the aims of the Constitution.

Resuming, we hold that the following propositions are in accordance with the Constitution, with applicable statutes, and with the elemental rules of reason and logic:

1. The Senate Electoral Tribunal is an independent constitutional body, separate from all other departments and branches of the government.

2. It is a tribunal in the true and strict sense of the word, with the limited jurisdiction granted to it by the fundamental law, and its functions are properly judicial.

3. The necessary means to exercise a power or jurisdiction partake of their nature and are and should, accordingly, be so classified in the legal nomenclature.

4. The means needed by the Senate Electoral Tribunal to perform its judicial functions, such as personnel, material, funds, should be considered as essential part of said judicial functions and, therefore, are judicial in character. No legislative official may control them without violating the Constitution.

5. The power granted by the Constitution to the Senate Electoral Tribunal as the "sole judge" of senatorial contests, is not abstract or as empty as a carcass, but real, positive, with all the attributes for effective manifestation in the external world, and, like all human powers, needs the tools and instruments linking cause and effect.

6. The Senate Electoral Tribunal, like all government organs, has to be provided with public funds for all its expenses, and the power and duty of providing such funds have been lodged by the Constitution in Congress.

7. That constitutional duty has been and is presently recognized by Congress in the provisions of section 182 of the Election Code.

8. The general constitutional duty of Congress to provide funds to the Senate Electoral Tribunal, by the clear provisions of section 182 of the Election Code, is specifically entrusted for actual performance to the Senate.

9. The appropriation of ₱180,000 made in the current Appropriation Act for the expenses of the Senate Electoral Tribunal, after three years of congressional neglect, has been placed among the items of the Senate, in accordance with the provisions of section 182 of the Election Code.

10. The text of the Appropriation Act, considering the place and wording of the item of ₱180,000 in question,

does not authorize an interpretation that would place said amount under the control of the Senate President, but, even on the contrary assumption, such interpretation should not be entertained because it would be violative of the Constitution.

11. When a statutory provision is susceptible of more than one interpretation, the one that would not make it contravene the Constitution should be adopted.

12. To place the amount in question under the control of the Senate President is contrary to public morals and policy, because it would give to a party directly affected in a pending litigation the power to incapacitate the Tribunal in the performance of its judicial functions.

13. The location of the item in the Appropriation Act is a matter of form that cannot affect the substance and nature of the control over the use and expenditure of the item that is inherent in the Tribunal, in the same way that regardless of the place the appropriations of the Supreme Court may occupy in the Appropriation Act cannot transfer the power of the Supreme Court to control said appropriation to other offices or officers.

14. For the effective performance of its functions the Tribunal should never be placed in the position of subservience to any other department, branch or agency of government, and to transfer the control over the funds appropriated for its expenses to any official and any other offices is to make it subservient to said officials.

15. The power granted by the Constitution to the Tribunal carries with it the power to issue rules for the effective performance of its judicial functions and such power is expressly recognized by section 182 of the Election Code.

16. The appointments of the personnel of the Tribunal are, according to its rules, to be signed by the Chairman of said body, and the petitioner's appointment as signed by said Chairman is the one that must be recognized to be valid and not the one issued by the Senate President or by the Secretary of the Senate.

17. The Tribunal is the one empowered to fix the salaries which its officers and employees must receive, the appropriation for its expenses having been made by Congress in a lump sum, and no power can change or revoke the amounts approved by the Tribunal.

18. In virtue of the provisions of section 182 of the Election Code, the Senate and its officers are to perform only the ministerial duties to faithfully execute the resolutions of the Tribunal regarding payment of salaries and expenses against the item in question.

19. When respondents failed to carry out to the letter the resolutions of the Tribunal, they may be compelled to do their duty by mandamus.

Before ending this opinion, we will devote some space to respondents' move to disqualify three Justices from sitting in this case.

There is no law upon which the move may be based. There is no law providing for any disqualification of members of the Supreme Court and there cannot be any such law until the Constitution shall have been amended to permit its enactment.

The provisions of Rule 126 are not applicable to members of the Supreme Court. They are applicable exclusively to judicial officers of inferior courts.

Rule 126 has been enacted by the Supreme Court in the exercise of its rule-making power granted to it by section 13 of Article VIII of the Constitution. The qualifications and disqualifications of the members of the Supreme Court are matters beyond the scope of said rule-making power. To contend otherwise is to contend that Congress may legislate on such matters, because it has the power of altering the judicial rules that the Supreme Court has enacted or may enact, and such result will be violative of the clear intention of the framers of the fundamental law to place such matters outside of the power of statutory legislation.

Section 8 of Article VIII of the Constitution empowers Congress to legislate on the qualifications and, consequently, on disqualifications of judges of inferior courts, as can be seen in the following text:

"SEC. 8. The Congress shall prescribe the qualifications of judges of inferior courts, but no person may be appointed judge of any such courts unless he is a citizen of the Philippines and has been admitted to the practice of law in the Philippines."

The Constitutional silence with regards to Justices of the Supreme Court places them beyond the reach of the legislative grant. "Inclusio unius est exclusio alterius." When the framers of the Constitution intended to include the members of the Supreme Court with judges of inferior courts in a general provision, they had done it expressly as they did in section 9 of Article VIII, regarding judicial tenure of office.

The Delegates to the Constitutional Convention had not thought of the need then or in any foreseeable future of any legislation to disqualify Justices of the Supreme Court from sitting in judgment on any case or group of cases. Although they agreed on the necessity of some reforms in the Supreme Court, to correct practices that were not satisfying to the bar or conducive to bolstering public faith and trust in the administration of justice, as can be seen in the revolutionary provisions of sections 10, 11, 12 and 13 of Article VIII of the Constitution, they shared the prevalent general opinion as regards the character of the man elevated to the highest tribunal of the

land. They could not have attained the exceptionally coveted honor of sitting therein without having hurdled the most acid tests as to intellectual and moral fitness and willingness to administer reasonable, impartial and fearless justice. Many, the Delegates, three-fourths of whom were lawyers, whenever they wanted to mention the highest specimens of human wisdom or to point out paragons of sterling moral character among the living Filipinos, could not avoid looking in the direction of the men sitting in the Supreme Court. As a matter of fact, the judicial dictums of such men had decisively influenced the Constitutional Convention in the adoption of a great number of the clauses of the fundamental law.

The Delegates believed that on the matter as to whether or not a Justice of the Supreme Court should take part in the cognizance, deliberation, and decision of a case, there is no better law than his own conscience. Many of them knew of the case of a Chief Justice who, when still presiding over an inferior court, refused to inhibit himself from trying a criminal case in which his own son was the accused and, finding him guilty on the evidence, sentenced him, as provided by law, to imprisonment. When in a case, to break a deadlock, on a legal question, we voted to convict the accused, defended by our son, and in another case we joined the majority in imposing upon the same son a fine of ₱50 for contempt (People *vs.* Guillen, L–1477), we have only done what we believed should be expected from all judicial officers. It was not necessary to bring to memory the examples of sterness of the *pater familias* of Roman history, who had not the least compunction of exercising to the limit of cruelty the power granted to them by the Twelve Tables on the life and death of their offspring

Consonant with the Constitution, this Supreme Court declared null and void *per se* the provision of the People's Court Act (Commonwealth Act No. 682) disqualifying the seven Justices,—including the Chief Justice,—who held positions in the puppet governments during the Japanese occupation, from taking cognizance of collaboration cases,—criminal cases of treason on appeal, where the accused also held positions in said puppet governments,—our far-reaching resolution having been rendered in the leading case of Vargas *vs.* Rilloraza (L–1612) and promulgated since February 26, 1948, 45 Off. Gaz., 3847.

We held invalid the legislative disqualification because, under the Constitution, Congress lacks the power to legislate on such matter. We also declared in the same decision that no person or officer, whether Justice of the Court of Appeals or judge of any other inferior court, may sit even temporarily in the Supreme Court, that privilege and right being reserved exclusively to Justices

of the Supreme Court regularly appointed in accordance with the provisions of the Constitution, and that such sitting by an outsider is also unconstitutional.

It is true that it was necessary for us to insist for two years in the invalidation of the unconstitutional provisions of the People's Court Act before the decision in the Vargas case was rendered and that during those two years the Supreme Court, with our consistent and repeated dissenting votes, had been giving effect in a great number of cases to the unconstitutional provisions, but such long reluctance or hesitancy to overthrow them, instead of weakening the effect of the vital decision, gives it rather the rock strength and permanence of primary doctrines that, because their essential truth and justice, withstand the corroding action of the ages. The length of time for the collective mind to reach a definite conclusion measures the magnitude of the mature deliberation that usually precedes and characterizes the ultimate in human actions.

Human complexes do not and should not enter in the actions of the dispensers of justice, much less when destiny has placed them in the supreme tribunal, the highest pedestal attainable for the ambitions of the most sanguine lawyer. Having reached the last goal in their legal career, in the performance of their official duties, they should not act with a weaker attitude than the person giving an *ante-mortem* declaration: the attitude of a man facing the infinite mystery of eternity, into which he will soon plunge in a final dive from which there is no possible return and for which he will not be allowed to carry any mortal baggage, earthly possessions, or temporary riches, and human relations cannot offer him anymore the terrors of hate or the promises of love or *vanitas vanitatis* any allurement.

On the other side, all those appearing before us should rather base their causes on the superior reasons that they may offer, than on any other factor, such as trying to eliminate members of this Supreme Court. They should not follow the example of those persons, in public office or in private life, including highest officials in the judiciary and in Congress, that use to end their arguments against the stand we have taken on controverted issues of public interest by suggesting or asking us to resign from our position as Justice of the Supreme Court. The attitude constitutes a confession that they recognize the inherent weakness of their arguments. Unable to invalidate our reasons with better ones, they would eliminate us in the false hope of suppressing the reasons they cannot destroy. Unable to destroy the ideas, they would destroy the man expressing them. Their hope is false, because our elimination will not eliminate all the sponsors of our ideas. If they are based on truth, if they are supported by justice,

if they are in accordance with the laws of the universe, sooner or later, others will take our place and raise the standard to expose the sham and crush the pretensions, of error and evil. Men are perishable but ideas are not. Men are ephemeral, but ideas are eternal.

Coming to the instant case, perhaps the disqualification of three members of this Court is sought in obedience to the inner volitions of subconsciousness, based on the recognition of the inherent strength of petitioner's cause. When on September 15, 1948, one day after it was argued, we started to deliberate on the case, the correct decision was so evident right away, that almost all the members reacted as a single individual, and the written memoranda of the parties only served to ratify and fortify the unanimous reaction. The Supreme Court seldom has considered a clearer case.

The petition shall be granted.

BRIONES, *M.*, conforme:

Tenemos otra vez ante Nos un caso que ofrece una singular oportunidad para una interpretación verdaderamente transcendental y constructiva de la Constitución—uno de esos casos que hacen época porque someten a dura prueba la solidez de las instituciones y determinan de una vez para siempre ora la flojedad de su estructura, ora su aptitud definitiva para resistir la prueba del tiempo y de las vicisitudes. Place ver que esta Corte Supreme, colocándose a la altura de su deber y cometido como supremo intérprete de la Constitución, accepta el reto con calma pero con firmeza, manteniendo incólumes ciertos contornos y bases de la ley fundamental conforme los concibiera el genio e inventiva de nuestra Asamblea Constituyente de 1934. Al autor de estas lineas le cupo el privilegio de pertenecer a aquella augusta asamblea: se comprenderá, por tanto, que no logre disimular su íntima satisfacción al ver que una obra en la cual tuvo su parte, modestísima como suya, sale ahora de los crisoles de la suprema justicia con caracteres, con temple que eparece de eternidad por lo sólido e indestructible.

El "issue," el punto controversial en el presente asunto se reduce sencillamente a lo siguiente: Los recurridos, en su concepto de funcionarios del Senado de Filipinas relacionados con el desembolso de los fondos correspondientes a dicho alto cuerpo colegislador, se niegan a pagar los sueldos devengados del recurrente por la razón de que éste trata de cobrarlos no en virtud de su nombramiento expedido por el Presidente del Senado, sino del expedido por el *chairman* del Tribunal Electoral del Senado. La teoría de los recurridos es que *administrativamente* este tribunal no es más que un comité o agencia del Senado y que, por tanto, su *chairman* carece de facultad para expedir

nombramientos a favor del personal, perteneciendo exclusivamente esta facultad al Presidente del Senado. Por su lado, el recurrente sostiene que tanto bajo la Constitución como bajo las leyes y reglamentos pertinentes el tribunal electoral es un cuerpo absolutamente autónomo e independiente no sólo en lo *judicial* sino también en lo *administrativo,* y que estos dos conceptos no pueden disociarse, de suerte que a la independencia judicial tiene que ir necesariamente ligada la independencia administrativa. El Procurador General, en representación de los recurridos, admite sin reservas la independencia judicial (Angara *vs.* Electoral Commission, 63 Phil., 139), pero niega la independencia administrativa.

Constituye un grave error el creer que los tribunales electorales son simples agencias del Congreso—del Senado o de la Cámara de Representantes, segOn sea el caso. Los que opinan de esta manera parecen no darse cuenta de que dadera *revolución sin sangre* en nuestro sistema politico-parlamentario; de que esta reforma transcendental nos coloca decididamente a la vanguardia de los pueblos democráticos más progresivos, inclusive más adelante todavía que los mismos Estados Unidos de América. Antes de la Constitución del Commonwealth [1935], nuestras cámaras legislativas, al igual que las americanas, eran los únicos jueces de las protestas electorales contra las actas o credenciales de sus miembros. El procedimiento entonces consistía en lo siguiente: Formulada la protesta, la misma se endosaba al comité de elecciones. A veces se organizaban varios comités de elecciones, según el número de protestas presentadas. La organización de estos comités seguia el patrón general de organización de los otros comités, es decir, que el *chairman* y la mayoria de los miembros pertenecian al partido gobernante, asignándose una pequeña participación a la minoria. Naturalmente, todo el personal de los comités (taquígrafos, escribientes, mensajeros, etc.) era parte de la maquinaria administrativa de cada cámara, sujeto al Presidente del Senado o al *Speaker* de la Cámara Baja, según fuera el caso. Los nombramientos se hacian por ls presidentes de las cámaras.

El comité o comités de elecciones enjuiciaban las protestas, sometiendo después su informe a la cámara en pleno. La cámara era la que en última instancia decidía la protesta, confirmando el acta protestada o rechazándola.

Ahora bien; a la vista de estos antecedentes resulta obligado preguntar: ¿se puede concebir que los padres fundadores, los autores de la Constitución hayan quitado de las cámaras la facultad exclusiva de enjuiciar las protestas electorales contra las actas de sus miembros, tan sólo para alojar esa facultad en una agencia legislativa que a lo más sería un comité de elecciones *glorificado?* ¿Qué

diferencia habría entonces entre el antiguo y nuevo sistema? No hubiera sido mejor continuar con los antiguos comités de elecciones, reteniendo en las cámaras la facultad última de *controlar* la acción de dichos comités, ya aprobando, ya rechazando sus informes? Si de todas maneras el nuevo cuerpo no había de ser más que un agente, un mandatario, ¿no es acaso la esencia de la teoría del mandato, de la agencia, el que el mandante, el principal, ejerza un poder último y residuario sobre el agente o mandatario?

No. La reforma es mucho más profunda, más radical, que ese cambio superficial, epidérmico, entrevisto por los recurridos y los que sostienen la tesis de éstos. Los autores de la Constitución hicieron una *revolución* de verdad, no una *revolución* a medias. En el ruidoso asunto de Vera *contra* Avelino, R. G. No. L–543 ya tuve ocasión de comentar ampliamente esta revolución. Estimo propio y pertinente reproducir ahora lo que entonces dije, a saber:

* * * * * * *

"Pero, en realidad, los casos de Fuentebella y Rafóls pueden citarse para un efecto completamente opuesto al perseguido por los abogados de los recurridos cuando se analizan y discuten amplia y objetivamente los motivos, circumstancias y designios que indujeron a nuestra Asamblea Constituyente a abandonar la bien arraigada tradición americana de hacer de las cámaras legislativas los únicos jueces de la elección, actas y calificaciones de sus miembros, trasladando la jurisdicción a un organismo constitucional completamente separado e independiente. Un análisis de este género viene a ser altamente revelador y expresivo. Lo primero que embarga la atención del observador es que cuando se adoptó esta reforma fundamental y original por la Asamblea Constituyente dominaba en Filipinas un partido político fuerte, denso, acaudillado por una personalidad genial, brillante, dinámica y poderosa—Manuel L. Quezon. Ese partido acababa de ganar en unas elecciones apasionadísimas y muy reñidas una victoria espectacular, abrumadora, que le daba el domonio y control de todos los resortes de la vida política no sólo en la nación sino hasta en las provincias y municipios. Ese partido dominaba naturalmente también la Convención Constitucional, la Asamblea Constituyente. ¿Que hizo ese partido en medio de su omnipotencia? ¿Le emborrachó ese peligroso licor de los dioses—el licor de la victoria, el licor del poder? No. Ese partido, sus caudillos, resolvieron ser generosos, ser justos, ser prudentes, ser democráticos, y lo fueron; determinaron pensar en términos de humanidad, en términos de nación, en términos de justicia pero justicia de verdad, en términos de libertad y democracia, y lo hicieron tal como lo pensaron. Podían haber escrito una constitución a su talante—una constitución que sirviese sus propios fines, que asegurase su perpetuidad en el poder. No lo hicieron. Y no solamente no lo hicieron, sino que hicieron algo más, algo extraordinario, inconcebible, juzgado a la luz y según la norma usual del egoismo de los partidos. Teniendo en sus manos un poder enorme, formidable, sumamente tentador, el poder de resolver las controversias electorales sobre las actas de los miembros de la Legislatura, renunciaron a ese poder para alojarlo en un cuerpo constitucional separado e independiente, el cual es prácticamente un tribunal de justicia: la Comisión Electoral, hoy Tribunal Electoral. La de-

terminación de hacer este cuerpo lo *más apolitico* posible se denota en el hecho de que sus miembros legislativos están distribuidos en igual número, 3–3, de suerte que los 3 Magistrados componen el factor decisivo.

"¿Por qué los redactores de la Constitución, y, sobre todo, por qué el partido político mayoritario pudo hacer esta renuncia de la que pocos ejemplos hay en la historia política del mundo? No parece difícil imaginarse los motivos, las causas, sobre todo para uno que como el autor de esta opinión tuvo algo que ver, siquiera muy modestamente, con las tareas de la Asamblea Constituyente. El pueblo filipino estaba empeñado en una suprema, altísima tarea—la de estructurar el Estado, la de escribir el código fundamental de la nación no sólo para los 10 años del Commonwealth sino para la República que se proclamaría después de dicho período de tiempo. Todo el mundo sabía que la suerte de la democracia en Filipinas dependia principalmente de la Constitución que se escribiera, no sólo en su letra sino en su espíritu, y, sobre todo, de la forma y manera cómo ella moldearía, penetraría e influiría en la vida cotidiana del pueblo y del individuo. Desde luego no éramos unos ilusos, utopistas, perfeccionistas; no aspirábamos ni mucho menos a crear un trasunto de la república ideal de Platón; pero deseábamos hacer lo mejor posible dadas nuestras circunstancias y limitaciones, dada nuestra historia y tradiciones, y dado el temperamento y genio político y social de nuestro pueblo. Se había acuñado y popularizado por aquel tiempo la frase "justicia política" para denotar la clase de justicia convencional que cabía esperar en relación con las protestas electorales planteadas ante las cámaras legislativas. No sólo se aceleraba o demoraba el despacho de las mismas a ritmo con los dictados de ciertas conveniencias de taifa o grupo, sino que no pocas veces el complejo político o personal era el factor determinante en las resoluciones y decisiones que se tomaban. Todo esto lo sabían los delegados a la asamblea constituyente, lo sabían los líderes de los partidos, lo sabían los escritores y pensadores dedicados al estudio de las ciencias políticas y sociales.

"En la Convención había delegados que eran miembros actuales y pasados de la Legislatura, hombres que sabían por propia experiencia cómo se resolvían las protestas electorales en las cámaras legislativas y que, además, sabían por sus lecturas lo que sobre el particular ocurría en otros países. Allí estaba, como delegado, Nicolás Rafóls—actor del drama político que determinó uno de los cometida por la mayoría en su caso. ¿Qué de extraño había que en medio de tal 'background', en medio de tal ambiente ideológico se formara una fuerte opinión en favor de un cambio de sistema, en favor de un arbitrio constitucional que sustituyera la llamada 'justicia política' con una justicia de verdad, una 'justicia judicial?' Así se creó la Comisión Electoral. Nada mejor que las siguientes palabras del malogrado Sr. Magistrado Abad Santos en su luminosa opinión concurrente en el celebrado asunto de Angara *contra* Comisión Electoral, para definir el carácter del sistema: "El objeto que se trataba de obtener con la creación de la Comisión Electoral no era crear un cuerpo que estuviera por encima de la ley, *sino el elevar las elecciones legislativas de la categoría de cuestiones políticas a la de justiciables.* Angara *contra* Comisión Electoral (63 Jur. Fil., 200). Y el ponente en dicho asunto el Magistrado Sr. Laurel se explaya más todavía con los siguientes pronunciamientos que no tienen desperdicio:

" 'Los miembros de la Convención Constitucional que planearon nuestra ley fundamental eran, en su mayor parte, hombres de edad madura y de exeperiencia. A buen seguro muchos de ellos estaban familiarizados con la historia y desarrollo político de otros países del mundo. Por tanto, cuando creyeron conveniente crear una Comisión Electoral como un organismo constitucional y lo

invistieron con la *exclusiva* función de conocer y fallar las controversias electorales, actas y condiciones de los miembros de la Asamblea Nacional, debieron de haberlo hecho así, no solamente a la luz de su propia experiencia, sino también teniendo en cuenta la experiencia de otros pueblos ilustrados del mundo. *La creación de la Comisión Electoral fué planeada para remediar ciertos males que conocían los autores de nuestra Constitución.* No obstante la tenaz oposición de algunos miembros de la Convención a su creación, el proyecto, como antes se ha dicho, fué aprobado por ese cuerpo mediante una votación de 98 contra 58. Todo cuanto se puede decir ahora sobre la aprobación de la Constitución, la creación de la Comisión Electoral es la expresión de la sabiduría y 'la justicia esencial al pueblo'. (Abraham Lincoln, First Inaugural Address, Marzo 4, 1861.)

" 'De las deliberaciones de nuestra Convención Constitucional resulta evidente que el objeto era traspasar en su *totalidad* toda la facultad previamente ejercitada por la Legislatura en asuntos pertenecientes a protestas electorales de sus miembros, a un tribunal *independiente e imparcial.* Sin embargo, no fué tanto el conocimiento y apreciación de precedentes constitucionales contemporáneos como la ha tiempo sentida necesidad de fallar protestas legislativas, *libres de prejuicios partidistas,* lo que impulsó al pueblo, obrando por medio de sus delegados a la Convención, a establecer este Cuerpo que se conoce por Comisión Electoral. Con estas miras, se creó un cuerpo en el que tanto el partido de la mayoría como el de la minoría están igualmente representados para contrarrestar la influencia partidista en sus deliberaciones, y dotado, además, de caracter judicial mediante la inclusión entre sus miembros de tres magistrados del Tribunal Supremo.

" 'La Comisión Electoral es una creación constitucional, investida de las facultades necesarias para el cumplimiento y ejecución de las funciones limitadas y específicas que la ha asignado la Convención. Aunque no es un Poder en nuestro Gobierno tripartito, es, para todos los fines, cuando obra dentro de los límites de su autoridad, un organismo *independiente.* Se aproxima más, ciertamente, al Departamento Legislativo que a cualquiera otro. El lugar que ocupa la disposición legal (arículo 4) que crea la Comisión Electoral en el Título VI, titulado 'Departamento Legislativo' de nuestra Constitución, es muy significativo. Su composición es también significativa por cuanto está constituída por una mayoría de miembros de la Legislatura. *Pero es un cuerpo separado e independiente de la Legislatura.*

" 'La concesión de facultades a la Comisión Electoral para conocer de todas las controversias relativas a las elecciones, actas y condiciones de los miembros de la Asamblea Nacional, tiene por objeto hacer que esas facultades sean tan completas y queden tan incólumes como si hubieran continuado originalmente en la Legislatura. El haber expresamente investido de esas facultades a la Comisión Electoral, es una negativa tácita del ejercicio de esas facultades por la Asamblea Nacional. Y esto es una *restricción tan eficaz a las facultades legislativas como una prohibición expresa contenida en la Constitución* (*Ex Parte* Lewis, 43 Tex, Crim. Rep., 1; State *vs.* Whisman, 36 S. D., 260; L.R.A., 1917 B, 1.) * * *' Angara *contra* Comisión Electoral (63 Jur. Fil., 151, 188–190)"

"Acaso se pueda decir algo más todavía acerca de los motivos que indujeron la creación de la Comisión Electoral; acaso se pueda aventurar la afirmación de que con este cuerpo los redactores de la Constitución, los caudillos de los partidos se propusieron asegurar por todos los medios y garantías la vida y crecimiento de la democracia en Filipinas. Democracia es esencialmente libre discusión de los asuntos públicos, de los problemas de la comunidad;

libre expresión del pensamiento y de la opinión. De esto se sigue necesariamente un régimen basado en la existencia de una mayoría que gobierna y de una minoría que aspira a gobernar entretanto que vigila los actos del gobierno en su doble papel de censor y de aspirante al poder. La mejor piedra de toque para apreciar y juzgar la calidad de un régimen político es la manera y forma cómo trata a las minorías y oposiciones. Un gobierno totalitario, despótico, las liquida, las ahoga; un gobierno democrático no sólo las respeta, sino que crea para ellas un clima vital propicio. Mirado en este sentido el Tribunal Electoral es un instrumento de minorías por antonomasia: la idea básica de su creación es el desposeer a las mayorias del poder de destruir, de aniquilar a las minorias mediante lo que cínicamente se ha denominado 'justicia política' e impartir a las minorías las máximas garantías de una justicia de verdad—una "justicia judicial." El delegado Vicente J. Francisco, ahora 'Floor-Leader' de la mayoría en el Senado, pronunciado su discurso a favor de la reforma en la Asamblea Constituyente, dijo entre otros conceptos las siguientes significativas palabras: 'Many have criticized, many have complained against the tyranny of the majority in electoral cases * * *' (Aruego, The Framing of the Philippine Constitution, tomo I, pág. 263). Por eso es un absurdo sostener que la facultad de suspender utilizada mediante la Resolución Pendatun haya quedado en el Congreso como *residuo*, independientemente de la jurisdicción exclusiva del Tribunal Electoral para resolver protestas electorales legislativas. Ello equivaldría a sostener que los redactores de la Constitución pusieron un remedio para derrotarlo al propio tiempo mediante una puerta reservada y trasera por la que podría escurrirse el pequeño monstruo da la 'justicia política'. Este juego infantil no podían haberlo hecho los redactores de la Constitución, los liders de los partidos que tuvieron alguna responsabilidad en la redacción de dicho documento * * *"

El argumento de que una cosa es la autonomía judicial—que los recurridos le reconocen al tribunal electoral—y otra cosa es la autonomía administrativa—que se la niegan—carece enteramente de mérito. Es verdad que la Constitución, que, por su naturaleza tiene que ser necesariamente esquemática, no contiene más que lineamientos generales de la organización de ambos tribunales electorales—del Senado y de la Cámara—pero en el terreno de la realidad, en la práctica, esa generalización se ha suplementado con disposiciones legales y reglamentarías que establecen fuera de toda duda la autonomía o independencia administrativa que se cuestióna. Así vemos que el artículo 182 del Código Electoral Revisado (Ley No. 180 de la República que a su vez trae su origen de la ley del Commonwealth No. 357, artículo 176), entre otras facultades asigna a los tribunales electorales la de "adoptar las reglas necesarias para el desempeño efectivo de sus funciones constitucionales", y a renglón seguido dispone que "todos los gastos de dichos tribunales y de sus respectivos miembros se sufragarán de los fondos de la cámara del Congreso a la cual pertenece cada tribunal, y todos sus telegramas y correspondencia serán transmitidos sin derechos postales. (Código Electoral Revisado o ley No. 180 de la República, artículo 182; ley del Commonwealth No. 357, artículo 176; Reso-

lución No. 73 sobre enmiendas a la Constitución con respecto a la legislatura bicameral). En el ejercicio de la facultad de que se ha hecho mérito cada tribunal electoral ha adoptado y promulgado su propio reglamento. El reglamento vigente del tribunal electoral del Senado se aprobó el 7 de Junio de 1946 y contiene reglas concernientes no solo al desempeño de las funciones judiciales del tribunal, sino también a la organización y funcionamiento administrativo. Así vemos que el artículo 4 inciso (*f*) de dicho reglamento dispone que el *chairman* o presidente del tribunal tiene, entre otros poderes, "con la aprobación del tribunal y de acuerdo con las disposiciones de la ley del servicio civil, el de nombrar o separar del servicio a cualquier empleado del tribunal." Y, bajo el epígrafe de "Control de sus propias funciones," el art. 5 provee que "el tribunal electoral del Senado *tendrá el control, direccion y supervision exclusivos de todas las materias correspondientes a su propia operación interna.*"

Parece superfluo decir que habiéndose adoptado dicho reglamento en virtud de autorización expresa de la ley y tácita, por lo menos, de la Constitución, de la cual dicha ley no es más que complemento necesario, tal reglamento tiene fuerza de ley y sólo puede ser abrogado mediante legislación o regulación posterior que no fuere contraria a la Constitución.

El artículo 182 del Código Electoral Revisado es como sigue:

"SEC. 182. *Contests before the Electoral Tribunals of Congress.*— In contest under their respective jurisdiction, the Electoral Tribunals of the Senate and the House of Representatives shall have and exercise the same powers which the law confers upon the courts, including that of summarily punishing contempts, ordering the taking of depositions, the arrests of witnesses for the purpose of compelling their appearances and the production of documents and other evidence, and the compulsory payment of costs and expenses which it may have assessed against the parties and their bondsmen; of giving notices of its decisions, resolutions, and orders and enforcing them through the officials charged with the enforcement of judicial orders; *and of making the necessary rules for the effective performance of their constutional functions.* All the expenses of the said Tribunals and of their respective members shall be paid from the funds of the house of Congress to which each Tribunal pertains, and their telegrams and correspondence shall be transmitted free of charge."

Y los artículos 4 y 5 del reglamento del tribunal electoral del Senado disponen, lo siguiente:

"THE CHAIRMAN

"4. The powers and duties of the Chairman of the Senate Electoral Tribunal shall be as follows:

(*a*) Issue calls for the meetings of the Tribunal;

(*b*) Preside at the hour previously fixed for the meeting;

(*c*) Preserve order and decorum during the session and for that purpose take such steps as may be convenient or as the Tribunal may direct;

(*d*) Pass upon all questions of order, but from his decision, any Member may appeal to the Tribunal;
(*e*) Enforce the orders, resolutions, and decisions of the Tribunal;
(*f*) With the approval of the Tribunal and in accordance with the provisions of the Civil Service Law, *appoint or remove any employee of the Tribunal.*

"CONTROL OF OWN FUNCTION

"5. The Senate Electoral Tribunal shall have the *exclusive* control, direction, and supervision of all matters pertaining to its own internal operation."

Ahora bien; a la vista de tales disposiciones legales y reglamentarias (estas últimas con fuerza de ley, como queda dicho) es otra vez obligado preguntar: pueden darse disposiciones más categóricas y terminantes que esas para establecer la autonomía administrativa de un cuerpo u organismo? Si "el tribunal electoral del Senado tiene el control, dirección y supervisión exclusivos de todas las materias concernientes a su propia operación interna", y si su *chairman* o presidente tiene, entre otros poderes, "el de nombrar o separar del servicio a cualquier empleado del tribunal con la aprobación de éste y con sujeción a las reglas del servicio civil" qué más se puede exigir para que el tribunal se le tenga por absolutamente autónomo e independiente no sólo en lo judicial sino tambien en lo administrativo?

Conste que estas disposiciones estaban en pleno vigor cuando se aprobó la ley de la república No. 320 que es la ley de presupuestos del presente año fiscal, 1948. ¿Hay algo en esta ley, o en otra ley cualquiera fuera de la presupuestal, que modifique, altere o derogue tales disposiciones? Nada de lo uno, ni de lo otro; y si lo hubiera, éllo sería a todas luces anticonstitucional.

Se arguye que la disposición especial No. 3 de la ley de presupuestos de 1948, que autoriza al Presidente del Senado a efectuar traslados de partidas dentro del marco presupuestal de dicho alto cuerpo colegislador, inclusive a consolidar puestos y hasta suprimirlos, tiene el efecto de conferir a dicho Presidente un *control* sino expreso, por lo menos tácito, sobre el personal administrativo del tribunal electoral. He aquí el texto literal de dicha disposición:

"3. Any provision of existing law to the contrary notwithstanding, the President of the Senate is hereby authorized, within the limits of the appropriations authorized in this Act for the Senate, to transfer items of appropriations, to abolish or consolidate items or positions, and to create new items or positions as may be necessary to effect simplification, economy and efficiency in the service, whenever in his judgment the public interest so requires." Special Provisions, No. 3, Appropriation for the Senate. Republic Act No. 320, p. 10.)"

Como se ve, no hay en esta disposición especial una referencia directa al personal del tribunal electoral. El liga-

men se tiene que buscar deduciéndolo del hecho de que la consignación de ₱180,000 para el tribunal electoral figura dentro de la casilla presupuestal del Senado. Efectivamente, entre las apropiaciones para el Senado se lee lo siguiente:

"IV.—SPECIAL PURPOSES

"1. For the personnel and expenses of the Senate Electoral Tribunal, its members, Commissions, delegates and helpers ..... ₱180,000

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Resulta evidente, de lo transcrito, que ni la fraseología de la disposición especial No. 3, ni la de la partida de ₱180,000 para el tribunal electoral, justifica la interpretación de que estas disposiciones de la ley presupuestal modifican, alteran a derogan expresa o tácitamente la autonomía administrativa del tribunal estatuida en el art. 182 del código electoral revisado y en el reglamento del tribunal de que se ha hecho mérito. Se puede sostener, con buen fundamento, que la partida de ₱180,000 consignada ahora específicamente en la de presupuestos para el tribunal electoral, ya no forma parte de los fondos del Senado, sino que constituye un fondo particular y concreto para dicho tribunal, siendo indiferente e inmaterial el que figure entre las apropiaciones senatoriales; pero, aún suponiendo que esa partida sigue siendo parte de los fondos del Senado, ¿quiere éllo decir que la misma cae bajo las facultades amplisimas, casí totalitarias, otorgadas al Presidente del Senado por la referida disposición especial No. 3 de la ley presupuestal? ¿Borra éllo de una plumada la autonomía administrativa del tribunal electoral, consagrada, como queda dicho, en el artículo 182 del código electoral revisado y en el reglamento de dicho tribunal? De ninguna manera. Ya en el citado artículo 182 se provee que los gastos de cada tribunal electoral se sufragaran de los fondos de la cámara respectiva: con todo, bajo los reglamentos adoptados y promulgados en virtud de las disposiciones de dicho artículo 182 se provee que el *chairman* o presidente de cada tribunal electoral tiene, entre otros poderes, "el de nombrar o removar a cualquier empleado del tribunal, con la aprobación de éste y sujeto a las reglas del servicio civil". Es decir, que tanto en las leyes como en los reglamentos jamás se ha considerado incompatible la autonomía administrativa de cada tribunal electoral con la circunstancia de que sus gastos se pagaran de los presupuestos de la cámara respectiva. En otras palabras, el reglamento que faculta expresamente al *chairman* del tribunal electoral, con la aprobación de éste, a nombrar el personal y a suspenderlo o removerlo, se adoptó y promulgó a sabiendas y con vista de la disposición expresada en el artículo 182 del código electoral de que los gastos del

tribunal se pagarían de los fondos del Senado. Luego es forzosa la conclusión de que la disposición especial No. 3 de la ley de presupuestos no se refiere más que a las apropiaciones para el Senado propiamente y de ningún modo a la consignada especialmente para el tribunal electoral. En buena hermeneútica legal esta es la única interpretación posible, pues no sólo deja subsistentes el artículo 182 del código electoral, los reglamentos de los tribunales electorales y la ley presupuestal, sino que sobre todo pone a salvo aquella parte de la Constitución que crea los tribunales electorales y garantiza su independencia. Es elemental que entre dos interpretaciones, una compatible con la Constitución y otra incompatible, la primera debe prevalecer.

Si la intención del Congreso, al aprobar la ley de presupuestos del presente año fiscal, hubiera sido el suprimir o mermar de alguna manera la autonomía administrativa del tribunal electoral del Senado, consagrada, como repetidas veces se ha dicho, en el artículo 182 del código electoral revisado y en el reglamento aprobado por dicho tribunal el 7 de Junio de 1946, lo hubiera declarado así expresamente. Es inconcebible que el Congreso hubiera velado su intención en la penumbra de esa disposición especial No. 3 de la ley presupuestal, cuyo propósito va dirigido indudablemente al personal del Senado y no al personal del tribunal electoral, *pues no se pretenderá que los empleados de este tribunal son empleados del Senado.* Y se comprende que el Congreso no haya intentado abrogar o mermar de alguna manera la autonomía administrativa de los tribunales electorales, pues no sólo sabía que la ley de presupuestos no es el instrumento apropiado para enmendar o derogar leyes existentes, sino que sabía sobre todo que con éllo hubiese infringido la Constitución que garantiza la absoluta independencia de dichos tribunales con tanta fuerza, si no más, que si fuesen parte integrante de la misma judicatura.

Decir que el tribunal electoral es independiente judicialmente, pero que no lo es administrativamente, es, en realidad, de lo más candoroso, por no llamarlo otra cosa. Aquí lo judicial no puede separarse de lo administrativo por la sencilla razón de que el tribunal no podría desempeñar eficazmente sus funciones constitucionales sin una adecuada maquinaria administrativa. El hecho mismo de que el Congreso haya estimado necesario dotar al tribunal electoral del Senado con un presupuesto de ₱180,000, denota claramente que el Congreso se ha dado perfecta cuenta de la necesidad de proporcionar al tribunal un buen equipo administrativo para que pueda llenar cumplidamente su cometido constitucional importantísimo. 180 mil pesos no es ciertamente moco de pavo, usando de un decir vulgar.

Se arguye, sin embargo, que el control de la maquinaria administrativa puede estar en manos del Presidente del Senado y todavía seguir siendo el tribunal autónomo judicialmente. Este es el busilis de la cuestión. Entiendo que no pudo haber sido la intención de los padres fundadores, de los autores y signatarios de la Constitución el vincular el control administrativo en manos de una persona o entidad extraña al tribunal electoral, menos en el Presidente del Senado. Así como en la organización y composición del tribunal se ha tenido buen cuidado en no dar predominio a ningún partido político equilibrando la representación de los partidos, el mayoritario y la oposición, mediante el ingenioso y original esquema de 3-3 (3 miembros para cada uno de los dos partidos), situando el fiel de la balanza en manos de los 3 Magistrados de la Corte Suprema que entran a formar parte del tribunal, así creo que fué también la intención de los autores de la Constitución el imprimir este mismo tono *apolítico* en la fase administrativa del tribunal, haciendo que este mismo sea quien organice su personal, lo nombre, lo suspenda o destituya según sea el caso, lo controle y discipline, en una palabra. Esto explica por qué el Congreso se apresuró a implementar o suplementar la Constitución insertando en el código electoral revisado el art. 182 de que tantas veces se ha hecho mérito. Ésto explica también por qué los tribunales electorales han adoptado y promulgado, sin *objeción de nadie,* mucho menos de las cámaras legislativas o de sus presidentes, sus propios reglamentos, los cuales tienen fuerza de ley y establecen fuera de toda duda su autonomía administrativa. Es inconcebible que los autores de la Constitución se hayan imaginado jamás que la maquinaria administrativa del tribunal electoral estuviera bajo el control del Presidente del Senado o del Speaker de la Cámara de Representantes, pues éllo equivaldría prácticamente a desnaturalizar el tribunal, a destruir su carácter *apolítico,* colocándolo bajo el dominio del partido gobernante—el partido de la mayoría.

Hay que tener en cuenta que bajo nuestro sistema de gobierno los presidentes de las cámaras legislativas no son meros "presiding officers" como, vgr., el presidente del Senado de los Estados Unidos de América que es al mismo tiempo Vice Presidente de la nación, o el *Speaker* de la cámara de los comunes de Inglatierra. El carácter de estos "presiding officers" es puramente judicial, presidiendo las sesiones legislativas con la objetiva imparcialidad de árbitros o jueces parlamentarios. Los presidentes de nuestras cámaras legislativas son mucho más que eso: son verdaderos jefes y liders políticos. De hecho, en el caso que nos ocupa es cosa admitida y establecida en autos que el actual Presidente del Senado es el jefe de su partido—el partido de la mayoría—y fué el principal gerente de campaña del mismo en las elecciones congresionales de No-

viembre pasado, las mismas elecciones que precisamente han dado lugar a las protestas en masa contra siete (7) actas senatoriales de dicho partido mayoritario. Esas protestas se están ventilando ahora ante el tribunal electoral del Senado. Gravísimos cargos de irregularidad, de fraude, de coacción, de terrorismo y de corrupción se han formulado por los protestantes sobre la forma cómo se realizaron aquellas elecciones. Se alega que los censos electorales de algunas provincias se falsificaron de una manera casi fabulosa, llenándose con miles de nombres electores imaginarios, los cuales, sin embargo, se contaron como votos efectivos a favor de los protestados. Decena, centenares de miles de balotas están cuestionadas, además de otros muchos documentos electorales. Toda esa enorme masa de pruebas y evidencias encerradas en centenares de urnas electorales se ha colocado bajo la responsabilidad del tribunal electoral. ¡Tremenda responsabilidad!

Es el caso, sin embargo, que los 9 miembros del tribunal no pueden vigilar y manejar por sí mismos toda esa tremenda balumba de materiales. No se va a esperar del tribunal que haga milagros. El tribunal necesita de guardias, de comisionados, de "clerks"; en una palabra, necesita ser ayudado por un personal administrativo de lo más idóneo, íntegro, honrado y fiel en el cumplimiento de sus delicadísimos deberes, todo ello dentro de las posibilidades que ofrece un presupuesto de ₱180,000. Ese personal tiene naturalmente o puede tener fácil acceso a las urnas, a las balotas y a los otros documentos obrantes ante el tribunal. Así que es de absoluta necesidad que tengan o merezcan la confianza de las partes litigantes, de sus jefes, del público, en general. No se debiera permitir en las oficinas del tribunal electoral una situación o un clima moral propicio a la corrupción por la acción deletérea de la influencia caciquil y política, o en que fundada o infundamente fermenten las suspicacias ("No basta que la mujer del César sea honrada; debe, además parecerlo.") Sin embargo de todo ésto, ahora se quiere que toda esa compleja maquinaria administrativa—nombramientos del personal, fijación de sus salarios, promociones, suspensiones, destituciones, disciplina, control, compra de equipos y mobiliario, etc., etc.— se coloque ¿en manos de quién? Pues bien; parece increible, fantástico: se quiere colocar precisamente en manos del que fué jefe de campaña de los protestados en las elecciones en que éstos obtuvieron su triunfo ahora controvertido ante el tribunal electoral; en manos del jefe del partido político que se está jugando su suerte y su vida política en esas protestas, pues el resultado de las mismas puede afectar a la balanza del poder en el Senado; en manos de un caudillo político que también se juega su vida y su suerte política en tales protestas, pues el resultado de las mismas puede afectar igualmente a la tenencia

del alto cargo que ahora desempeña; en manos de un lider político, que, por lo menos, moral e indirectamente, se halla envuelto en los graves cargos de irregularidad, fraude y corrupción política formulados con o sin razón por los protestantes; en una palabra, en manos de un caudillo político que ya puede ser un ángel, un dechado de virtudes, pero que en un mundo de humanos como el nuestro tiene necesariamente que provocar sospechas en la mente de sus adversarios y simpatizadores de éstos, no por nada, sino por las especiales circunstancias en que le han colocado sus obligaciones y compromisos políticos y, sobre todo, su condición de jefe de su partido. ¿Cómo se puede concebir que los padres fundadores, los autores de la Constitución se hayan figurado jamás que en tal situación y en tales circunstancias se entregara el control de la maquinaria administrativa del tribunal electoral al jefe de uno de los partidos que litigan ante dicho tribunal y se juegan precisamente en dicho litigio su vida y fortuna política? ¿Verdad que e simple planteamiento de la cuestión y de los hechos provoca ya una instintiva repugnancia y excluye la posibilidad de que uno pueda conformarse con un plan tan contrario a las reglas y normas elementales del "fair play", de la imparcialidad judicial e inclusive de la decencia política?

Se arguye, con énfasis, que no hay razón para dudar de la buena fe y de los motivos del Presidente del Senado; que, por el contrario, se debe presumir que el mismo cumplirá honradamente sus deberes como jefe administrativo del personal administrativo del tribunal electoral; y que así como en el pasado, bajo dicho plan, no hubo incidentes que deplorar en las relaciones entre el Presidente del Senado y el tribunal, acogiendo aquél, al parecer, todas las sugestiones y recomendaciones de caracter administrativo del tribunal, así también es de esperar que estas buenas relaciones entre ambas partes continúen bajo el mismo plan. El argumento tiene un serio inconveniente, a saber: que sacrifica los principios, las leyes, inclusive la Constitución, al complejo personal; hace depender el expedito funcionamiento del tribunal en un momento dado de las cualidades personales del que en ese momento estuviere desempeñando la presidencia del Senado. La contestación al argumento es que en una bien ordenada democracia la mejor salvaguardia de la justicia y de los intereses públicos es un *"gobierno de leyes y no de hombres"*; que los autores de la Constitución no pudieron menos de tener en cuenta este principio clásico de buen estadismo al redactar el precepto que crea el tribunal electoral; y que lo tuvieron igualmente en cuenta los legisladores al incorporar en el código electoral revisado el art. 182 y los miembros de los tribunales electorales al aprobar los reglamentos de que tantas veces se ha hecho mención.

La mejor prueba de que un gobierno impersonal de leyes es siempre mejor que un gobierno de hombres basado en el complejo personal, es lo ocurrido en el presente caso. El *modus vivendi* entre el Presidente del Senado y el tribunal electoral operó bien mientras no hubo diferencias. ¿Qué ocurrió, sin embargo, al seguir el primer conflicto? El *modus vivendi* se vino abajo como un castillo de naipes. No había entonces más que una alternativa: o el Presidente del Senado se salía con la suya, como suele decirse, o el tribunal se aferraba a su posición. Si lo primero, el tribunal perdía su independencia garantida por la Constitución y las leyes; si lo segundo, se paralizaban las funciones del tribunal por falta de maquinaria administrativa, en ambos casos con grave detrimento de los intereses de la justicia.

Es que los hombres, por alto que estén, no quedan inmunes al capricho, al mal humor, al rencor, en una palabra, a esas pequeñas pasiones que suelen perturbar a los mortales. También pueden dividirse por diferencias honradas de opinión y no estar dispuestos a ceder, a transigir, paralizando toda acción. Así que la mejor política, la medida más segura de buen gobierno es trazar normas y adoptar reglas que sujeten y encaucen la acción y conducta oficial—reglas y normas que en casos de conflicto entre las partes interesadas deben ser interpretadas y aplicadas por hombres colocados en situación de administrar justicia sin miedo ni favor. Esta es la esencia del gobierno de leyes, en contraposición al gobierno de hombres. Esta es la esencia también de otro famoso lema democrático: "Perezcan los hombres, pero sálvense los principios."

Con lo dicho queda asimismo contestada la insinuación de que en el pasado el tribunal electoral toleró el control del Presidente del Senado sobre su personal administrativo, dejando que éste hiciese los nombramientos y fijase inclusive la cuantía de los salarios. No hay *estoppel* en cuestiones de derecho, máxime cuando de por medio va la Constitución. Así que cualquier tiempo era bueno para que el tribunal electoral declarase su emancipación, y ahora que esa emancipación se ha declarado el país tiene todos los motivos para acogerla con júbilo como un acontecimiento que señale una época decisiva en los anales de nuestra historia constitucional y política. Hay acontecimientos que merecen los honores de la piedra miliaria y éste es indudablemente uno de ellos.

En realidad, queda todavía un paso, de índole legislativa, para esa total emancipación, y es que se declare categórica e inequívocamente en la ley, mediante una enmienda al art. 182 del código electoral revisado, en el sentido de que hoy en adelante se sufraguen los gastos de los tribunales electorales con fondos propios, en vez de que se tomen de los fondos de cada cámara legislativa. Más

arriba he dicho que la partida de ₱180,000 para el tribunal electoral del Senado, tal como está consignada, en la ley de presupuestos de este año, es prácticamente una consignación específica y ya no forma parte de los fondos del Senado a pesar de que materialmente figura dentro del marco presupuestal de este alto cuerpo colegislador; pero para disipar toda duda sería mejor que en adelante el presupuesto de cada tribunal electoral se particularizara (*earmark*) inequívocamente. Esto tendría el efecto de redondear el desenvolvimiento constitucional.

Ningún esfuerzo debe escatimarse para rodear el sufragio de las más firmes sólidas garantías de limpieza, sinceridad y eficacia. Requisito primario del éxito de las democracias es la elección libre, sincera e incorrupta de los funcionarios y oficiales que por la constitución y la ley tienen el encargo de administrar los asuntos de la nación, de la provincia y del municipio. Con razón se ha dicho que la diferencia entre la bala y la balota electoral es la medida del trayecto que media entre el orden y la estabilidad de un gobierno fundado en el sufragio libre, sincero e incorrupto de los ciudadanos y las turbulencias de una revolución resultantes del escamoteo y fraude electoral.

De ahí la tremenda importancia que implica el establecimiento cabal y difinitivo de la autonomía completa—judicial y administrativa—de los tribunales electorales del Congreso. Esa autonomía entraña la reafirmación de una majestad, de una supremacía: la majestad y supremacia de la balota electoral—símbolo de paz, orden, estabilidad, justicia y democracia.

Writ granted.

[No. L-2460. December 2, 1948]

NICETAS A. SUANES, petitioner, *vs.* THE CHIEF ACCOUNTANT, Accounting Division, Senate, and THE DISBURSING OFFICER, Disbursement and Property Division, Senate, respondents.

1. CONSTITUTIONAL LAW; JURISDICTION OF SUPREME COURT; MANDAMUS AGAINST CONGRESS OR BRANCH THEREOF.—Mandamus will not lie against the legislative body, its members, or *its officers* to compel the performance of duties *purely legislative* in their character which rightly pertain to their legislative functions and over which they have exclusive control.
2. ID.; MANDAMUS AGAINST OFFICERS OF CONGRESS TO ENFORCE MINISTERIAL ACTS; CASE AT BAR.—In the case at bar, there is no pure or exclusive legislative function involved. The instant action relates to the performance of respondents' ministerial duty to disburse to the Electoral Tribunal the funds that rightly belong to it. "The Courts will not interfere by mandamus proceedings with the legislative department of the government in the legitimate exercise of its powers, except to enforce mere ministerial acts required by law to be performed by some officer thereof."

3. ID.; ELECTORAL TRIBUNALS; POWER OF THE CHAIRMAN TO APPOINT ITS SUBORDINATE OFFICERS.—It is a well-settled rule that when jurisdiction is conferred by law on a court or tribunal, that court or tribunal, unless otherwise provided by law, is deemed to have authority to employ all writs, processes and other means necessary to make its power effective. In the instant case, the Electoral Tribunal was created by the Constitution to perform a specific mission. That tribunal cannot accomplish its mission without subordinate personnel. Consequently, in the absence of any specific provision of law to the contrary, the Tribunal may, either by rules or by specific orders, provide for the manner of selecting its employees. And in this case, The Electoral Tribunal, by rule, provided that the power of appointment is lodged in its Chairman with the approval of the Tribunal.

4. RULES OF JUDICIAL TRIBUNALS HAVE FORCE OF LAW.—When not contrary to any specific provision of law and when necessary for the accomplishment of purposes for which said tribunal is created, rules of judicial tribunals have force of law.

RESOLUTION ON MOTION FOR RECONSIDERATION

MORAN, *C. J.:*

Respondents seek the reconsideration of the decision of this Court wherein a writ of mandamus was issued directing them to pay to petitioner his salary as Private Secretary to Honorable Ramon Diokno, member of the Electoral Tribunal for the Senate, in accordance with the appointment issued by the Chairman of said tribunal.

All the points raised in the motion for reconsideration, including that of jurisdiction, had been fully considered by the Court before rendering its decision. However, in view of the several unwarranted assertions and abstract interpretations tendered by respondents, some points of the decision must be reiterated.

Respondents allege that this Court "denies that the Senate has anything to do with the Senate Electoral Tribunal, but in effect, makes the disbursing officer of the Senate the disbursing officer of the Senate Electoral Tribunal," and that "this Honorable Court cannot take away the funds of the Electoral Tribunal from the custody of the respondents and in the same breadth order them to make payments from the same funds." Evidently, respondents failed to understand the decision of the Court. There is absolutely no ground for the frantic accusation that this Court has taken away the funds of the Electoral Tribunal from the custody of respondents. This Court held that the Electoral Tribunal is an entity independent of and distinct from the Legislature and entrusted with a specific mission. In order that this entity may function and may carry out its mission, the Election Code (section 182) provided that the expenses for the Electoral Tribunal shall be paid from the funds of the respective Houses of Congress. In pursuance of this mandate, the Appropriations Act set aside from the funds of the Senate the sum of ₱180,000 for the

Senate Electoral Tribunal. Hence, we ruled that this sum of ₱180,000 belongs to the Senate Electoral Tribunal and not to the Senate nor to any other entity. The custody of said funds may still be, technically at least, with the officers of the Senate, but the funds no longer belong to the Senate but to the Electoral Tribunal. What remains with respondents is their ministerial duty of disbursing the funds for the Electoral Tribunal whenever that entity so requests. Since the Appropriations Act set aside the sum of ₱180,000 from the funds of the Senate and gave it to the Electoral Tribunal for the Senate, said sum must be kept and may be disbursed only for the purposes provided for by law, namely, for the Electoral Tribunal.

For the first time respondents allege in their motion for reconsideration that this Court has no jurisdiction to issue a writ of mandamus against respondents because it would in effect constitute a compelling act against the Senate. There is a misconception of the doctrine laid down by this Court on this matter. "Mandamus will not lie against the legislative body, its members, or *its officers* to compel the performance of duties *purely legislative* in their character which rightly pertain to their legislative functions and over which they have exclusive control * * *", thus is the rule reiterated by this Court in the case of Alejandrino *vs.* Quezon, 46 Phil., 88. In the case at bar, there is no pure or exclusive legislative function involved. The instant action relates to the performance of respondents' ministerial duty to disburse to the Electoral Tribunal the funds that rightly belong to it. "The Courts will not interfere by mandamus proceedings with the legislative department of the government in the legitimate exercise of its powers, except to enforce mere ministerial acts required by law to be performed by some officer thereof." (55 C. J., S; sec. 130, p. 215; *see also* 34 Am. Jur., pp. 910–911; 95 A. L. R. 273, 277–278.) Thus, the writ has been granted, upon the application of a member of the house of representatives of a State, to compel the Speaker of the house to certify to the Comptroller of Public Accounts the amount to which the member was entitled as compensation for mileage. (*See* High's Extraordinary Legal Remedies, section 136, pp. 151–152.)

It is maintained by respondents that there is no specific provision of law granting to the Chairman of the Electoral Tribunal for the Senate the power to appoint its subordinate officers. What is true, however, is that there is no specific provision of law giving said power to the President of the Senate. It is a well-settled rule that when jurisdiction is conferred by law on a court or tribunal, that court or tribunal, unless otherwise provided by law, is deemed to have authority to employ all writs, processes and other means necessary to make its power effective.

In the instant case, the Electoral Tribunal was created by the Constitution to perform a specific mission. That Tribunal cannot accomplish its mission without subordinate personnel. Consequently, in the absence of any specific provision of law to the contrary, the Tribunal may, either by rules or by specific orders, provide for the manner of selecting its employees. And in this case, the Electoral Tribunal, by rule, provided that the power of appointment is lodged in its Chairman with the approval of the Tribunal. This rule, having the force of law, is valid, there being no provision of law against it and it being necessary for the proper accomplishment of the purposes for which the Tribunal was created by the Constitution.

The main burden of respondents' motion for reconsideration consists in the argument that in the past, the Electoral Tribunals had submitted themselves administratively to the Legislature. Perseverance in error is no reason for perpetuation of error.

For all the foregoing, the motion for reconsideration is denied.

Feria, Pablo, Perfecto, Bengzon, and *Briones, JJ.,* concur.

Montemayor, J., concurs in the result.

Motion denied.

[No. L-1473. October 27, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* HERVASIO IRISUILLO (*alias* GERVASIO ERESSUELO), defendant and appellant.

1. ATTORNEY AND CLIENT; EXTENT OF DEFENSE EXPECTED IN THE APPELLATE COURT.—Attorneys assigned to defend the appellants in this court are not necessarily expected to sustain the latter's innocence whenever they are otherwise convinced, and as a matter of fact in many instances counsel de oficio have asked for the affirmance of the trial court's verdict.
2. CRIMINAL LAW AND PROCEDURE; PLEA OF GUILTY; COURTS ARE NOT CONCERNED WITH MOTIVES OF ACCUSED.—The courts are not concerned with the motives of the accused in confessing their guilt.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Francisco A. Rodrigo for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Guillermo E. Torres* for appellee.

BENGZON, *J.:*

Charged with the crime of treason in a four-count amended information, the herein accused was tried in the City of Iloilo in October, 1946, before a branch of the

People's Court presided by Judges Fortunato V. Borromeo, Vicente Varela and Florentino Saguin. He pleaded not guilty and was assigned counsel de oficio in the person of Atty. Domitillo Abordo. After listening, in three court sessions, (October 9, 10 and 11) to the testimony of the witnesses for the prosecution Tigredia Esporas, Juana Egaran, Julia Uy, Patria Melliza, Nena Betia and Jose Gallenero, the accused finally broke down on October 15, 1946, announcing through counsel, his readiness to plead guilty. Whereupon the following took place, as reported by stenographer E. Matro:

"JUDGE SAGUIN to accused:

"Your counsel manifested that you are asking permission to withdraw your former plea of not guilty and substitute it with that of guilty; the Court desires to know if that is really your desire?

"ACCUSED:

"I admit.

"JUDGE SAGUIN:

"Q. Before granting your petition, the Court desires to know if you are ready to suffer the necessary consequence of that plea of guilty which the Court will impose as provided by law for the crime charged in the complaint as proven by the evidence introduced so far by the prosecution.

"A. "Yes, sir, I could not do any other thing.

"MR. DEBUQUE:

"At this stage of the proceedings, I pray that the information be read again, count for count.

"JUDGE SAGUIN:

"Read the information.

"(Count 1 was read)—

"ACCUSED:

"I plead guilty because I have nothing more to do.

"(Count 2 was read)—

"ACCUSED:

"I plead guilty because I could not do any other thing else.

"(Count 3 was read)—

"ACCUSED:

"I plead guilty to all those as I have nothing more to do.

"(Count 4 was read)—

"ACCUSED:

"I cannot do any other thing, I plead guilty to that.

"MR. ABORDO: I have nothing more to say. I request that I be relieved.

"JUDGE SAGUIN: Case submitted."

The information that was read to the accused, after alleging his Filipino citizenship, complained

"1. That during the period comprised between August 1, 1943, and March 20, 1945, in the City and Province of Iloilo, Philippines, said accused, with the intent and purpose of giving aid and comfort to the enemy, did then and there wilfully, feloniously and treasonably join and serve as an agent, informer and spy of the Japanese Armed Forces for the purpose of gathering information regarding the activities, identity and whereabouts of guerrillas, of arresting and apprehending guerrillas, guerrilla suspects and their civilian supporters; that as such agent, informer and spy for the enemy, the herein accused who always carried a firearm, in conspiracy with

said enemy, led, guided and accompanied Japanese patrols in Iloilo City, Buenavista, Jordan, Igbaras and other towns within the Province of Iloilo during which patrols many Filipino civilians (names unknown) suspected as guerrillas were apprehended, detained, investigated and tortured by said accused and his Japanese companions.

"2. That on or about the 21st day of January 1944, in the municipality of Igbaras, Province of Iloilo, Philippines, the herein accused, with the intent and purpose of giving aid and comfort to the enemy, did then and there wilfully, feloniously and treasonably lead, guide and accompany a patrol composed of Japanese and constabulary soldiers and Filipino spies to apprehend guerrillas and guerrilla suspects; that the herein accused and his Japanese and Filipino companions, in barrio Lab-on, did arrest and capture Salvador Elechocon, Enrique Embalsado, Lourdes Elegario, Maria Erfe, Narciso Ebanag, Tigredia Esporas and Juana Elgaran upon the suspicion of being guerrillas, guerrilla relatives and guerrilla supporters; that after having hanged, maltreated and tortured brutally the aforesaid persons with the object of forcing them to reveal the whereabouts, identity, arms, radio installations, and activities of guerrillas, the herein accused and his Japanese companions finally killed Salvador Elechocon, Enrique Embalsado, Lourdes Elegario, Maria Erfe and Narciso Ebanag.

* * * * * * *

"4. That on or about October 26, 1944, in Buenavista, Province of Iloilo, Philippines, said accused, in conspiracy with the enemy and with the intent and purpose of giving aid and comfort to said enemy, did then and there, in company with a group of Japanese soldiers, wilfully, feloniously and treasonably apprehended and captured Julia Uy and Ester Betia, guerrilla operatives, one man and his wife and their three children, (names unknown) as guerrilla suspects; that while the aforesaid seven persons were detained in a cave, the accused herein brutally tortured and later on killed the above-mentioned man, woman and their three children; that said accused by means of force, violence and intimidation had carnal knowledge with said Julia Uy and Ester Betia against their will; that after having abused the aforesaid two women, the accused herein delivered them to the local Japanese garrison where they were investigated and tortured by the said accused and the Japanese to force them to disclose their guerrilla activities, after which Ester Betia was made to walk naked before the public up to the wharf where she was finally killed by the Japanese."

After the accused had made the admission of guilt, the court did not pass judgment immediately. It took time to consider the evidence introduced; and in a decision dated March 20, 1947, unanimously sentenced the prisoner to the penalty of death, to pay a fine of ₱20,000 and to indemnify the heirs of the deceased Maria Erfe, Salvador Elechecon, Enrique Embalsado, Lourdes Elegario, etc., after setting out in clear and specific language the facts which in its opinion had been established by the incomplete evidence for the prosecution.

Pursuant to legal provisions applicable, the *expediente* was forwarded to this Court; and as the prisoner had no counsel of his own, counsel de oficio was appointed: Atty. Francisco Rodrigo. This gentleman in a motion attached to the records of a few weeks later begged to be excused upon the ground that after examining the case, he had

found no error committed by the court *a quo*. The motion was denied, because this Court believes that attorneys assigned to defend the appellants in this Court are not necessarily expected to sustain the latter's innocence whenever they are otherwise convinced, and as a matter of fact in many instances counsel de oficio have asked for the affirmance of the trial court's verdict. However, to the credit of said attorney be it noted that he evidently examined the *expediente* anew, and discovered two points which he urged, in a carefully prepared brief, to save defendant from the gallows. He claims first that the record is not clear as to the circumstances surrounding the defendant's plea of guilty, it appearing that there are two separate transcripts, one by stenographer E. Matro and another by stenographer C. Jumapao, and whereas in the first the accused appears to be represented by Attorney Abordo, in the other he is represented by Attorney Domitillo. This argument must be overruled, because obviously when on October 15, 1946, the plea of guilty was made, both stenographers were present and took notes. Their transcripts as to what happened are substantially the same, except for the names of the attorneys. But this discrepancy is explained by the circumstance that counsel for the accused was Atty. Domitillo Abordo.

Again, taking up the defendant's answers made in open court, "I plead guilty because I have nothing more to do" "I cannot do any other thing, I plead guilty to that" etc., counsel expresses serious doubts as to whether the accused actually intended an unqualified confession of guilt. It is quite possible, he argues, that the accused made those manifestations "because he was detained, and therefore could not sufficiently prepare his defense; it might have been because he was so poor that he could not even get his own lawyer to defend him; it could have been due to a violent public opinion against him; and it could have been because he listened to witnesses testify to falsehood which were, nevertheless, hard to disprove."

These are mere conjectures. As to his pretended helplessness, the prisoner had counsel de oficio that apparently tried his best, and he was not so completely unable to go around and prepare his defense, because, as the record discloses, the fiscal protested that although the accused was "supposed to be detained in jail he was seen twice outside of the public market" "accompanied by his wife" and "talked to our witnesses in a sort of threatening manner". Anyway the courts are not concerned with the motives of the accused in confessing their guilt. And the People's Court's judges after listening to the testimony relating the treasonable and murderous deeds of the indictee had every reason to conclude that he gave up the fight because it was useless to fight in view of the overwhelm-

ing evidence for the prosecution (additional witnesses were scheduled to testify) that proved the following facts:

During the Japanese occupation the accused, who was a Filipino, belonged to the Coastal Defense Corps (CDC) a military organization whose members were armed and wore the uniform of Japanese soldiers whom they helped in the campaign against resistance forces in the province of Iloilo. He was known as a spy of the Japanese, by several operatives of the guerrilla organization in that locality.

In the morning of January 21, 1944, Tigredia Esporas, her daughter-in-law Maria Erfe and the latter's two sons prepared to escape from their home in bario Tapgo of Igbaras, Iloilo, because they had been informed that a Japanese patrol was about. Unfortunately, however, some Japanese soldiers arrived, accompanied by two members of the CDC, one of them the accused Gervasio Eressuelo. A search of the house ensued. The occupants were asked the whereabouts of the menfolk (who pertained to the guerrilla). Tigredia Esporas replied that they were in the fields taking care of their work animals. The answer was obviously unsatisfactory, and the above-named women and children were arrested and taken, together with Juana Egaran and her husband (Narciso Ibanag), to the cottage of Victor in the sitio of Lab-on, same municipality. There they saw Salvador Elechecon, Enrique Embalsado and Lourdes Elegario. The first was undergoing torture by Japanese soldiers, who had hung him half a foot from the floor (the rope tied under his armpit) in an effort to extract from him information about the guerrillas, their ammunition and the Americans and one Gimperly, who was hiding in the place. He insisted he knew nothing about the matter, and was beaten with a pestle. As a last recourse the Japanese burned a mat under his feet and subsequently took him away to a nearby rice field where he was found dead later. A similar fate befell the youthful Enrique Embalsado. Lourdes Elegario was likewise hung head down and beaten when she failed to give satisfactory answers to the questions "Where are the Army (guerrilla) ammunitions and leaders? Where are the Americans?" Finally Gervasio Eressuelo got a mat, rolled it around her body and set it on fire. Like Enrique Embalsado and Salvador Elechecon she died as a consequence of the torture. Identical treatment was applied to Maria Erfe who was suspected of being the wife of a guerrillero. She also died a victim of torture.

All the above is in connection with count No. 2.

With regard to count No. 4 there was evidence that on October 26, 1944, Japanese soldiers, accompanied by some Filipino members of the CDC (among the latter the herein accused) raided the command post (CP) of the guerrillas

under one Lt. Locario in Dagasaan, Buenavista. They captured several persons, among them Ester Betia and Julia Uy. One of the raiders, Peping Mojica identified Ester as the sister of Nena Betia paramour of Lt. Locario, and Carlos Palma another CDC said that she was a secret operative of the guerrilla forces. (In fact she was.) The prisoners were marched to the town; but at night the party had to camp near the shore. That evening the herein accused and Carlos Palma raped Ester Betia. The accused also succeeded in having intercourse with Julia Uy after threatening her, saying he would let the Japanese kill her if she did not accede to his desires. The next morning the captives were taken to the poblacion and investigated in the Japanese garrison. Ester denied connection with the guerrillas, and denied acquaintance with Julia Uy (although they had worked together as secret operatives of the under-ground forces). Tired of her stubbornness, her captors finally brought her to the wharf and there decapitated her. To further strengthen his evidence as to the death of Ester the prosecutor announced that his other witness, Vicente Betia, who had seen the corpse of Ester would be presented at the next session.

But when on October 15 the trial of the case was resumed, the accused (as hereinabove related) requested to withdraw his plea of not guilty and substituted it with a plea of guilty.

There is no doubt therefore that this prisoner has committed treason in the most aggravated form i. e. with murder and rape (Article 114, Revised Penal Code). However, for lack of enough votes in this Tribunal, the capital punishment imposed on him may not be affirmed. Instead he will be imprisoned for life. With this modification the judgment of the court *a quo* will be affirmed in all other respects.

Moran, C. J., Parás, Pablo, Perfecto, Briones, Tuason, and *Montemayor, JJ.*, concur.

OZAETA, *J.*, concurring:

I concur but desire to explain that the inability of the court to impose the death penalty in this case is due to the fact that only seven Justices, including myself, voted for the imposition of that penalty.

Judgment modified.

[No. L-1403. October 29, 1948]

VICENTE CALUAG and JULIANA GARCIA, petitioners, *vs.* POTENCIANO PECSON and ANGEL H. MOJICA, Judges of First Instance of Bulacan, and LEON ALEJO, respondents.

1. CONTEMPT; WHEN CONTEMPT IS DIRECT OR INDIRECT.—The contempt supposed to have been committed by the petitioners is

not a direct contempt under section 1, Rule 64, for it is not a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice. It is an indirect contempt or disobedience of a lawful order of the court, under section 3, Rule 64, of the Rules of Court.

2. ID.; INDIRECT CONTEMPT; PLEADING AND PRACTICE.—Where a contempt under section 3 has been committed against a superior court or judge the charge may be filed with such superior court, and the accused put under custody; but if the hearing is ordered to be had forthwith, the accused may be released from custody upon filing a bond in an amount to be fixed by the court for his appearance to answer the charge.

3. COURTS; JURISDICTION OVER THE SUBJECT MATTER.—Jurisdiction of the subject matter of a particular case is something more than the general power conferred by law upon a court to take cognizance of cases of the general class to which the particular case belongs. It is not enough that a court has power in abstract to try and decide the class of litigations to which a case belongs; it is necessary that said power be properly invoked, or called into activity, by the filing of a petition, complaint or other appropriate pleading.

4. CONTEMPT; STATUTES; SECTION 9, RULE 39 IN CONNECTION WITH SECTION 7 OF RULE 64 APPLIED AND CONSTRUED.—The provision of section 9, Rule 39, is applicable only to specific acts other than those provided for or covered by section 10 of the same Rule, that is, it refers to a specific act which the party or person must personally do, because his personal qualification and circumstances have been taken into consideration in accordance with the provision of article 1161 of the Civil Code. But if a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any specific act which may be performed by some other person, or in some other way provided by law with the same effect, as in the present case, section 10 and not said section 9 of Rule 39 applies; and under the provision of said section 10, the court may direct the act to be done, at the cost of the disobedient party, by some other person appointed or designated by the court, and the act when so done shall have like effect as if done by the party himself.

5. JUDGMENTS; WANT OF POWER TO RENDER THE PARTICULAR JUDGMENT, EFFECT OF.—A judgment may be void for want of power to render the particular judgment, though the court may have had jurisdiction over the subject matter and the parties. A wrong decision made within the limits of the court's authority is erroneous and may be corrected on appeal or other direct review, but a wrong, or for that matter a correct, decision is void, and may be set aside either directly or collaterally, where the court exceeds its jurisdiction and power in rendering it. Hence though the court has acquired jurisdiction over the subject matter and the particular case has been submitted properly to it for hearing and decision, it will overstep its jurisdiction if it renders a judgment which it has no power under the law to render.

6. CERTIORARI; JUDGMENT OF IMPRISONMENT IMPOSED BY COURT WITHOUT STATUTORY POWER; COLLATERAL ATTACK.—A sentence which imposes upon the defendant in a criminal prosecution a penalty different from or in excess of the maximum which the Court is authorized by law to impose for the offense of which the defendant was convicted, is void for want or excess of jurisdiction as to the excess in the latter case. And a judgment of imprisonment which the court has no constitutional or statu-

tory power to impose, as in the present case, may also be collaterally attacked for want or rather in excess of jurisdiction.

ORIGINAL ACTION in the Supreme Court. Certiorari and Prohibition.

The facts are stated in the opinion of the court.

Marcial G. Mendiola for petitioners.
Antonio Gonzalez for respondent L. Alejo.
The respondent Judge Pecson on his own behalf.

FERIA, *J.:*

This is a petition for certiorari and prohibition filed by the petitioners on the ground that the respondent judge acted without or in excess of the jurisdiction of the court in rendering the resolution dated April 1, 1947, which declares the petitioners guilty of contempt of court for not complying or performing the order of the court of January 7, 1947, in the case No. 5486 of the Court of First Instance of Bulacan, requiring the petitioners to execute a deed of sale in favor of plaintiff over one-half of the land *pro indiviso* in question, within ten days from the receipt of copy of said resolution, and which orders that the petitioners be imprisoned until they perform the said act.

The first ground on which the petition is based is that the judgment of the court which the petitioners are ordered to perform has not yet become final. This ground is unfounded. From the pleadings and annexes it appears that the judgment of the lower court against the petitioners was appealed to the Court of Appeals and was affirmed by the latter in its decision promulgated on May 30, 1944; that the petition to appeal to the Supreme Court by certiorari filed by the petitioners was denied on July 24, 1944; that a motion for reconsideration filed by the petitioners was also denied on August 21, 1944; that the record of the case, having been destroyed during the liberation, was reconstituted; that on September 24, 1945, the Deputy Clerk of this Court wrote a letter to and notified the petitioners of the resolution of the Court declaring said record reconstituted, together with the copies of the decision of the Court of Appeals and resolutions of the Supreme Court during Japanese occupation of June 24 and August 21, 1944; and that on October 23, 1946, the clerk of Court of First Instance of Bulacan notified the attorneys for both parties of the said decision of the Court of Appeals and resolutions of the Supreme Court. There can be no question, therefore, that the judgment of the Court of First Instance above mentioned, as affirmed by the Court of Appeals, has become final and executory.

The other two grounds alleged by the petitioners in support of the present petition for certiorari are: that plaintiff's action abated or was extinguished upon the death of

the plaintiff Fortunato Alejo, because his right of legal redemption was a personal one, and therefore not transferable to his successors in interest; and that, even assuming that it is not a personal one and therefore transferable, his successors in interest have failed to secure the substitution of said deceased by his legal representative under section 17, Rule 3. These reasons or grounds do not deserve any serious consideration, not only because they are without merits, but because the Court of First Instance of Bulacan, having jurisdiction to render that judgment, the latter cannot be disobeyed however erroneous it may be (Compañía General de Tabacos *vs.* Alhambra Cigar & Cigarette Mfg. Co., 33 Phil., 503; Golding *vs.* Balatbat, 36 Phil., 941). And this Court can not in this proceeding correct any error which may have been committed by the lower court.

However, although not alleged, we may properly take judicial notice of the fact that the respondent Judges have acted without jurisdiction in proceeding against and declaring the petitioners guilty of contempt of court.

The contempt supposed to have been committed by the petitioners is not a direct contempt under section 1, Rule 64, for it is not a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice. It is an indirect contempt or disobedience of a lawful order of the court, under section 3, Rule 64, of the Rules of Court. According to sections 4 and 5 of said rule, where a contempt under section 3 has been committed against a superior court or judge the charge may be filed with such superior court, and the accused put under custody; but if the hearing is ordered to be had forthwith, the accused may be released from custody upon filing a bond in an amount to be fixed by the court for his appearance to answer the charge. From the record it appears that no charge for contempt was filed against the petitioners nor was a trial held. The only proceeding had in this case which led to the conviction of the defendants are: the order of January 7, 1947, issued by the lower court requiring the defendants to execute the deed of conveyance as directed in the judgment within ten days from the receipt of the copy of said order, with the admonition that upon failure to do so said petitioners will be dealt with for contempt of court; the motion of March 21, 1947, filed by the attorney for the respondent Leon Alejo, administrator of the estate of Fortunato Alejo, that the petitioners be punished for contempt; and the resolution of the Court of April 1, 1947, denying the second motion for reconsideration of March 17, 1947, of the order of January 7, 1947, filed by the petitioners, and ordering the petitioners to be imprisoned in the provincial jail until they have complied with the order of the court above mentioned.

It is well settled that jurisdiction of the subject matter of a particular case is something more than the general power conferred by law upon a court to take cognizance of cases of the general class to which the particular case belongs. It is not enough that a court has power in abstract to try and decide the class of litigations to which a case belongs; it is necessary that said power be properly invoked, or called into activity, by the filing of a petition, complaint or other appropriate pleading. A Court of First Instance has an abstract jurisdiction or power to try and decide criminal cases for homicide committed within its territorial jurisdiction; but it has no power to try and decide a criminal case against a person for homicide committed within its territory, unless a complaint or information against him be filed with the said court. And it has also power to try civil cases involving title to real estate situated within its district; but it has no jurisdiction to take cognizance of a dispute or controversy between two persons over title of real property located in his province, unless a proper complaint be filed with its court. So, although the Court of First Instance of Bulacan has power conferred by law to punish as guilty of indirect contempt a party who disobeys its order or judgment, it did not have or acquire jurisdiction of the particular case under consideration to declare the petitioners guilty of indirect contempt, and order their confinement until they have executed the deed of conveyance in question, because neither a charge has been filed against them nor a hearing thereof held as required by law.

The respondent Judge Angel Mojica acted not only without jurisdiction in proceeding against and declaring the petitioners guilty of contempt, but also in excess of jurisdiction in ordering the confinement of the petitioners, because it had no power to impose such punishment upon the latter.

The respondent judge has no power under the law to order the confinement of the petitioners until they have complied with the order of the court. Section 9, Rule 39, in connection with section 7 of Rule 64, provides that if a person is required by a judgment or order of the court to perform any other act than the payment of money or sale or delivery of real or personal property, and said person disobeys such judgment or order while it is yet in his power to perform it, he may be punished for contempt and imprisoned until he performs said order. This provision is applicable only to specific acts other than those provided for or covered by section 10 of the same Rule, that is, it refers to a specific act which the party or person must personally do, because his personal qualification and circumstances have been taken into consideration in accordance with the provision of article 1161 of the Civil Code.

But if a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any specific act which may be performed by some other person, or in some other way provided by law with the same effect, as in the present case, section 10, and not said section 9 of rule 39 applies; and under the provision of said section 10, the court may direct the act to be done at the cost of the disobedient party, by some other person appointed or designated by the court, and the act when so done shall have like effect as if done by the party himself.

It is also well settled by the authorities that a judgment may be void for want of power to render the particular judgment, though the court may have had jurisdiction over the subject matter and the parties. A wrong decision made within the limits of the court's authority is erroneous and may be corrected on appeal or other direct review, but a wrong, or for that matter a correct, decision is void, and may be set aside either directly or collaterally, where the court exceeds its jurisdiction and power in rendering it. Hence though the court has acquired jurisdiction over the subject matter and the particular case has been submitted properly to it for hearing and decision, it will overstep its jurisdiction if it renders a judgment which it has no power under the law to render. A sentence which imposes upon the defendant in a criminal prosecution a penalty different from or in excess of the maximum which the court is authorized by law to impose for the offense of which the defendant was convicted, is void for want or excess of jurisdiction, as to the excess in the latter case. And a judgment of imprisonment which the court has no constitutional or statutory power to impose, as in the present case, may also be collaterally attacked for want or rather in excess of jurisdiction.

In Cruz *vs.* Director of Prisons (17 Phil., 269, 272, 273), this Court said the following applicable to punishment imposed for contempt of court:

"* * * The courts uniformly hold that where a sentence imposes a punishment in excess of the power of the court to impose, such sentence is void as to the excess, and some of the courts hold that the sentence is void *in toto;* but the weight of authority sustains the propositions that such a sentence is void only as to the excess imposed in case the parts are separable, the rule being that the petitioner is not entitled to his discharge on a writ of *habeas corpus* unless he has served out so much of the sentence as was valid. (*Ex parte* Erdmann, 88 Cal., 579; Lowrey *vs.* Hogue, 85 Cal., 600; Armstrong *vs.* People, 37 Ill., 459; State vs. Brannon, 34 La Ann., 942; People *vs.* Liscomb, 19 Am. Rep., 211; *In re* Taylor, 7 S. D., 382, 45 L. R. A., 136; *Ex parte* Mooney, 26 W. Va., 36, 53 Am. Rep., 59; U. S. *vs.* Pridgeon, 153 U. S., 48; *In re* Graham, 138 U. S., 461.)"

In the present case, in view of the failure of the petitioners to execute the deed of conveyance directed in the

judgment of the court, the respondent may, under section 10, Rule 39, either order its execution by some other person appointed or designated by the court at the expense of the petitioners, or enter a judgment divesting the title of the petitioner over the property in question and vesting it in Leon Alejo, administrator of estate of the deceased Fortunato Alejo, and such judgment has the force and effect of a conveyance executed in due form of law.

In view of the foregoing, the order of the court of April 7, 1947, ordering the confinement of the petitioners in the provincial jail until they have complied with the order of the court, is set aside without costs. So ordered.

Moran, C. J., Pablo, Bengzon, Briones, and *Tuason, JJ.,* concur.

Parás, J., concurs in the result.

PERFECTO, *J.,* concurring and dissenting:

On August 10, 1937, Fortunato Alejo filed a complaint against the spouses Vicente Caluag and Juliana Garcia, herein petitioners, for the redemption of one-half *pro indiviso* of a parcel of land in Guiguinto, Bulacan, covered by transfer certificate No. 19178. After trial, the Court of First Instance of Bulacan rendered judgment on June 23, 1941, ordering petitioners to execute a deed of sale in favor of Fortunato Alejo, upon payment by plaintiff, as purchase price, of the amount of ₱2,551. The judgment was affirmed by the Court of Appeals of Central Luzon on May 30, 1944. A petition for review on *certiorari* was denied by the Supreme Court of the so-called Republic of the Philippines on July 28, 1944. Petitioners' counsel alleges, under oath, that he was not notified of said denial. The record of the case was lost or burned during the liberation of Manila. Fortunato Alejo died on December 10, 1944, petitioners made aware of the fact only on December 1, 1946. The record, upon petition, was duly reconstituted on August 30, 1946, a resolution to said effect having been issued by this Court.

On October 21, 1946, respondent Leon Alejo, judicial administrator of the estate of Fortunato Alejo, filed a motion with the Court of First Instance of Bulacan for the execution of the judgment. On October 28, the motion was indefinitely postponed. On November 21, Leon Alejo filed another motion for the execution of the judgment, which was granted on January 7, 1947, Judge Potenciano Pecson ordering defendants "to execute the deed of sale in favor of the plaintiff for the sum of ₱2,551 over one-half of the land *pro indiviso* described in transfer certificate of title No. 19178 within ten days from the receipt of a copy of this order; upon failure to do so the said defendants will be dealt with for contempt of court:"

On February 3, 1947, Leon Alejo filed a petition praying that defendants be punished for contempt for having failed to comply with the order of January 7. On February 19, defendants filed a petition seeking reconsideration of the order of January 7, and dismissal of the complaint for contempt, upon three grounds: (*a*) that the judgment of the Court of Appeals of Central Luzon, has not become final and executory; (*b*) that the plaintiff's action was abated or extinguished upon Fortunato Alejo's death, his right to legal redemption being personal; and (*c*) that his successors cannot ask for the execution of the judgment because they failed to secure the reglementary substitution of parties and amendment of the judgment.

On March 3, Judge Pecson denied defendants' petition and granted them five days within which to comply with the order of January 7, otherwise they would be held in contempt of court. On March 17, defendants filed another petition for reconsideration. On March 21, Leon Alejo moved again that defendants be punished for contempt. On April 1, Judge Angel H. Mojica issued a resolution denying the second petition for reconsideration, finding defendants guilty of contempt of court and ordering their confinement in the provincial jail of Bulacan until they have complied with the order of January 7, directing further that warrant of arrest be issued to said effect. On April 1, 1947, Leon Alejo deposited with the court of first instance the amount of ₱2,261.63, evidenced by provincial receipt No. 211013.

Upon the above facts, petitioners raise before us several questions.

(*a*) LACK OF NOTIFICATION

Petitioners maintain that the decision of the Court of Appeals of Central Luzon, promulgated on May 30, 1944, and the resolution of the Supreme Court of the so-called Republic of the Philippines, issued on July 24, 1944, denying their petition for review on *certiorari,* had not yet become final, because their counsel has not yet received a copy of the resolution of denial dated July 24, 1944.

Although the allegation of non-receipt of notice is made under oath and the opposing party do not specifically contradict the allegation, in respondent Leon Alejo's answer it is stated that petitioners filed a motion for reconsideration of the resolution of denial of July 24, 1944, and the motion was denied on August 21, 1944.

A perusal of the record as declared reconstituted by this Court demonstrates that on August 11, 1944, the Supreme Court of the so-called Republic of the Philippines adopted a resolution granting petitioners an extension of five days only of the reglamentary period within which to file a motion for reconsideration of the resolution of denial of July 24, 1944, the extension granted being in

response to petitioners' prayer for an extension of ten days, and that on August 21, 1944, said Supreme Court issued a resolution denying the motion for reconsideration, with Mr. Justice Ozaeta dissenting.

The authenticity of the copies of papers forming part of the reconstituted record has not been disputed by petitioners. We may, therefore, assume that said record represents the proceedings which have taken place. Upon this premise, we are constrained to dismiss petitioners' allegation that they were not notified of the resolution of denial of July 24, 1944, as, otherwise, they could not have filed a petition for extension of ten days and, after being given an extension of only five days, a motion for reconsideration, the filing of which was necessarily based on petitioners' knowledge of the resolution of denial of July 24, 1944, a knowledge that they should have obtained, in the ordinary course of judicial proceedings, from official notification.

Petitioners' contention, being based on a fact that is unacceptable, has no leg to stand on.

(*b*) EFFECT OF FORTUNATO ALEJO'S DEATH

The next question raised by petitioners is that upon Fortunato Alejo's death on December 10, 1944, the complaint "was abated or extinguished," his "act of legal redemption being personal and not real," and his heirs "could not have acquired that right" (of legal redemption).

Petitioners appear to labor under the confusion of mistaken concepts. They assume that the right of legal redemption of Fortunato Alejo is of such personal nature that it could not be transmitted to his heirs. The proposition has no basis in law. There is absolutely no reason why his heirs could not inherit said right of legal redemption. Petitioners then jump to the proposition that Fortunato Alejo's death "abated or extinguished" his complaint, premised on the wrong idea that the right of legal redemption is not transmissible by inheritance. The reasoning is the result of a confusion of petitioners' wrong concept on substantive law with a mistaken idea of adjective law.

Petitioners' contention has no merit.

(*c*) NINE-DAY PERIOD

Petitioners contend that, granting arguendo that the judgment has become final and executory and that Fortunato Alejo's heirs stepped into his shoes after his death and could have exercised his right of legal redemption, "they should have done or exercised it within nine days from his death or knowledge thereof."

Petitioners chose not to adduce any reason in support of the theory which has absolutely no basis in law.

(*d*) PROCEDURAL OMISSIONS

Petitioners allege that Fortunato Alejo's heirs, or the administrator or executor of his estate, are not entitled to the execution of the judgment due to three procedural omissions, i. e.: (*a*) No petition for substitution has been filed with the Court of Appeals of Central Luzon; (*b*) No petition to secure amendment of the judgment so as to make effective the substitution; and (*c*). No petition to remand the record to the Court of First Instance of Bulacan.

The grounds alleged are exclusively technical in nature and of scant importance. After the judgment became final and executory, it is late to raise the question of substitution. In the present case, it appears that Leon Alejo is appearing as the judicial administrator of the deceased Fortunato Alejo. Such a representative capacity, undoubtedly given to him by proper judicial appointment, satisfies fully the legal purposes of substitution. The remanding of the record to the Court of First Instance of Bulacan is a matter of official duty, compliance of which does not require any initiative from any party.

(*e*) CONTEMPT OF COURT

Petitioners allege that they could not properly and legally de declared in contempt of court because: (*a*) The judgment sought to be executed ordered them to execute the corresponding deed of sale upon payment by plaintiff of the sum of ₱2,551, and only the sum of ₱2,261.63 has so far been paid or consigned, thus leaving a balance of ₱289.37, and (*b*). The judgment provides that the sale be executed "in favor of Fortunato Alejo, who is now dead."

Respondent Leon Alejo answered that the amount deposited with the Court of First Instance of Bulacan is ₱2,551. At the hearing, his attorney explained that two deposits were made, one in the sum of ₱2,261.63 and the other in the amount of ₱289.37, due to a misunderstanding of the clerk of the lower court of said respondent. But the fact that the deposit was made only on April 1, 1947, as alleged under oath by petitioners, is not denied by respondent. April 1, 1947, is the date of the resolution issued by Judge Mojica, ordering confinement of petitioners in the provincial jail of Bulacan until they comply with the order of January 7, 1947.

Upon the technicality of substitution, petitioners' contention is without merit.

We are of opinion that the resolution holding petitioners guilty of contempt and ordering their confinement in the provincial jail of Bulacan should be denied force and effect upon weightier grounds than the ones alleged by petitioners.

The applicable provision of law in this case is section 10 of Rule 39 which provides:

"*Judgment for specific acts; vesting title.*—If a judgment directs a party to execute a conveyance of land, or to deliver deeds or other documents, or to perform any other specific act, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is within the Philippines, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment shall have the force and effect of a conveyance executed in due form of law."

Accordingly, the lower court, instead of intimidating petitioners to be dealt with for contempt of court, as provided in the last part of its order of January 7, 1947, and insisting in its order of March 3, 1947, that petitioners should comply with said order of January 7, reiterating that, otherwise, "the court will be constrained to hold said defendants in contempt of court" and, lastly, in issuing the resolution of April 1, 1947, finding petitioners guilty of contempt, ordering their confinement in the provincial jail of Bulacan, until they have complied with the order of January 7, and, to said effect, ordering their arrest, the lower court should have directed that the deed of sale provided in the judgment and in the order of January 7, to be executed by petitioners, be done by some other person "appointed by the court" and "at the cost of the disobedient party." The lower court's orders intimidating petitioners with punishment for contempt, and ordering their arrest and confinement in the provincial jail of Bulacan for an indeterminate period, until they have complied with the order of January 7, a course of action that petitioners may not follow until their respective deaths, must be declared null and void.

There are members of this Court which hold the position that the lower court could have legally followed two alternatives, either by applying the above-quoted section 10 of Rule 39 or by punishing petitioners for contempt, by applying section 9 of the same Rule 39, but they are of opinion that the lower court acted with grave abuse of discretion by resorting to the drastic measure of contempt proceedings, when the proceeding outlined by section 10 of rule 39 could be availed of easily and without causing unnecessary suffering to any party. The rule is that when two or more means are available to attain a legal end, harsher ones should only be adopted as a last resort.

There are other members of this Court, among them the writer of this opinion, that are convinced that in the case at bar section 9 of Rule 39 is not applicable and the lower court could not have followed other proceeding than the one outlined by section 10 Rule 39. Furthermore, those

of us who maitain such position, are of opinion that, even in the hypothesis that the lower court could have followed the contempt proceedings outlined by section 9 of Rule 39, the lower court could only punish petitioners with fine or fixed term of imprisonment, or both, as provided by section 6 of Rule 64, but never to hold them in confinement, as provided in the resolution of April 1, 1947, for an indefinite period, until petitioners should choose to execute the deed of sale in question. Although that authority is granted in section 7 of Rule 64, we hold that said section cannot be given force nor effect, because it is null and void as violative of the following constitutional mandate: "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted." (Section 1[19], Article III of the Constitution.)

While petitioners could have avoided altogether any imprisonment or they could reduce its term to any period of time they may choose, there is nothing to preclude them from undergoing forty or more years imprisonment, if they decide to continue refusing that long, while the life imprisonment provided by the Revised Penal Code for the most heinous crimes, murder, parricide, treason, and others, is limited to a maximum of thirty years. Is it not shocking that a longer term should be imposed for a simple refusal to sign a deed of sale, for which refusal the disobedient party may have strong reasons, because he may deem it humiliating, than for the most hateful crimes known under our laws? By the way, is it not absurd for the lower court to wait for petitioners to execute the deed of sale until they choose to perform the action required from them, which may take years, instead of appointing a third person to perform the act according to section 10 of Rule 39, which will take just a small fraction of a day?

For all the foregoing, the orders of the lower court of January 7, March 3, and April 1, 1947, are set aside. To make effective the execution of the deed of sale as provided in the judgment in question, upon the validity of which the members of this Court follow the same alignment as that in the case of Co Kim Cham *vs.* Valdes, L–5, the lower court is ordered to follow the procedure outlined by section 10 of Rule 39. The petition is denied in all other respects.

Order of April 7, 1947 set aside.

[No. L–2496. October 29, 1948]

MARCOS ENAGE, petitioner, *vs.* THE PROVINCIAL WARDEN OF DAVAO CITY, respondent

[No. L–2497. October 29, 1948]

ANG TIONG, GO KAM, LIM PENG, TE CHAYE, LO BOK, and SY BIO, petitioners, *vs.* ENRIQUE A. FERNANDEZ, in his capacity as Judge of the Sixteenth Judicial District

(Davao City), and THE PEOPLE OF THE PHILIPPINES, respondents.

1. CONSTITUTIONAL LAW; BAIL IN CAPITAL OFFENSE; SUFFICIENCY OF EVIDENCE SO AS TO DENY BAIL.—When the facts intended to be proved are based only on hearsay and uncorroborated testimony which was timely objected to, such isolated fact would not be sufficient to deny the constitutional right to bail.
2 ID.; ID.; ID.; TESTIMONY FROM POLLUTED SOURCE.—Lone testimony from polluted source appears not to satisfy the constitutional requirement that the evidence of guilt must be strong in a capital offense in order that a court may be justified not to grant bail. The word "sufficient" does not convey the idea involved in the constitutional requirement. The uncorroborated testimony of a self-confessed killer for reward, when tainted with contradictions and improbabilities, is not a strong evidence of a capital offense against his co-accused.

ORIGINAL ACTION in the Supreme Court. Habeas corpus.

The facts are stated in the opinion of the court.

Donato C. Endriga, Jose Avelino, Jr., Emigdio Dakanay, Alfredo Noel; De Santos, Herrera & Delfino, Miguel N. Lanzona, and *Ruben D. Hilario* for petitioners.

Solicitor General Felix Bautista Angelo and *Solicitor Ramon L. Avanceña* for respondents.

PERFECTO, *J.:*

These two cases have been heard and submitted for decision jointly. The petitioner in the first case prays for a writ of *habeas corpus* to be released on bail. The six petitioners in the second case pray that the order of respondent judge, dated September 11, 1948, cancelling the bonds for provisional release of petitioners and ordering their recommitment into custody, be declared null and void. The petitioner in the first case was denied bail in the same order of September 11, 1948, complained of in the second case. On April 15, 1946, Alfonso Ang Liongto, merchant, was murdered in front of his establishment in Davao City.

On April 29, 1946, an information for said murder was filed against Dy Too and five others whose names are not identified, the information alleging that Dy Too shot the deceased from behind using a .45-caliber firearm, while his co-accused posted themselves at places calculated to afford protection for themselves and insure the success of the murder. On August 23, 1946, the information was amended to include Chu Che Beng as accused. The two accused were recommended to bail in the amount of ₱40,000 each.

On November 30, 1946, after trial, Dy Too and Chu Che Beng were found guilty and sentenced to *reclusión perpetua* and to indemnify the heirs of the deceased in the amount of ₱5,000.

On December 18, 1947, another information for the same murder was filed against James Young as co-conspirator of Dy Too and Chu Che Beng. In the information against Young, Carlos Cheng, Ang Chu Yeng, and Uy Quet Cuan were also mentioned as co-conspirators.

On February 3, 1948, James Young was found guilty and sentenced to *reclusión perpetua* and to indemnify the heirs of the deceased in the sum of ₱2,000.

Thereafter, a special prosecutor, Filemon Saavedra, detailed by the Department of Justice, filed on June 9, 1948, a third information for the same murder naming nine new accused, besides the three others mentioned in the information filed against James Young and including 27 other Chinese Davao residents, without mentioning their names. This third information covers, therefore, 39 persons as accused, including the six petitioners, Ang Tiong et al., in L–2497, who were all admitted to bail at ₱40,000 each and accordingly released.

On August 5, 1948, said third information was amended by including Marcos Enage as one of the accused. No bail was recommended for his provisional release.

Immediately after his arrest, a petition for bail, dated August 6, 1948, was filed in his behalf. On the same day, the special prosecutor filed an opposition to the petition, and at the same time moved for the cancellation of the bonds filed by the other accused, and for their re-arrest.

The special prosecutor alleged that when he filed the original information he did not wish to have the strength of his evidence known to the defense for fear that it may prejudice the success of the prosecution and it was the reason why he recommended that each of the accused be allowed to file a bond of ₱40,000 each, but on June 25, 1948, the prosecution was able to discover damaging evidence against the accused and after the discovery of written documents, strongly showing the guilt of the accused, the special prosecutor felt that he could reveal a portion of the evidence without any fear that it may prejudice the success of the prosecution.

Hearing took place on September 11, 1948.

The trial court issued the order of September 11, 1948, denying bail to Marcos Enage and cancelling the bonds filed by Ang Tiong, Go Kam, Lim Peng, Te Chaye, Lo Bok, and Sy Bio.

The trial court declared that the prosecution supplied "sufficient" evidence that shows the guilt of said accused.

It is stated in the lower court's order that James Young, the accused in the second information, admitted having participated in the crime and pointed to the six petitioners in L–2497 and others, among those who, with offer of payment, induced him and companions to kill the deceased, and that at the hearing of September 11, 1948,

Young testified that Ang Tiong and companions, petitioners in L–2497, had several conferences with him and his companions in different parts of Davao City to determine how the murder of Ang Liongto was to be executed and the amount that Young and his companions would receive as reward, and that the last conference took place in Daliao and the amount agreed upon was definitely fixed at ₱50,000, which was accepted by Young and his companions.

The order mentioned also the fact that Pedro Dayot, stenographer of prosecutor Saavedra, testified that he saw in the Immigration Office a document signed by Marcos Enage in which he asked for the deportation of Ang Liongto.

No other evidence is mentioned in the order.

We have perused the transcript of the evidence taken at the hearing. There appears the testimony of stenographer Dayot on the alleged reconstitution of the crime, his declarations in this respect being all hearsay based on statements made by Young, and on the affidavit he alleged to have seen in the Immigration Office that had been subscribed to by Marcos Enage on May 26, 1945, alleging that he was apprehended by the *Kempei-tai* on June 3, 1944, because of the complaint of Ang Liongto. The affidavit was not exhibited in court and the testimony of Dayot on said affidavit was objected to by the defense. The second witness was Alejandro Zacarias, technical sergeant of the PC, but his testimony is reduced to the alleged reconstitution of the crime and is all hearsay based on the declarations of James Young and Dy Too, the defense having objected strenuously to the admission of said hearsay evidence.

The last witness was James Young himself who testified that Ang Liongto died around April 15, 1946, "because we killed him. The people of Davao told us to kill him." He arrived in Davao from Manila on March 27, 1946. His companions were Dy Too, Chu Che Beng, Ang Cho Eng, Uy Quit Cuan, Carlos Cheng. They arrived by plane. Go Tiong, Lem Peng, Te Chaye, Lo Ma Co, Lo Gok and some others, escorted them to Claveria Street, where they stayed. Lo Ma Co is a Chinese mestizo named also Marcos Enage. Young and companions were met by those people at the landing field. Go Tiong, Lim Cham and Lem Peng visited them the first night. They rode in a jeep around the city, after which the killing of Ang Liongto was proposed. The proposal was made in "many places," first at the hotel, then at Matina, then at Bonifacio Street, and sometimes in Kwong Lee restaurant and at Chicago restaurant. Tan Con Siong was also connected in the plan to kill Ang Liongto. The final agreement for the killing took place at Daliao and the amount

of reward was agreed at ₱50,000. The witness was not able to receive the amount. Those present in the final conference were Lem Peng, Lo Ma Co, Te Chaye, Tan Bon Siong and others "I could not remember anymore." Those implicated in the killing of Ang Liongto were ten, "we were six" from Manila, and "four from here in Davao." Cross-examined on details, the witness alleged to have lapses of memory and that there were things that he could not remember.

The defense called Antonio Paz, clerk of court, to identify pages 32 and 33 of the records which were presented as Exhibits I and I–A, where the only thing that James Young testified is that he did not know the house of Marcos Enage, this being the only instance in which such name has been ever mentioned during his whole testimony in his own trial.

With regards to Marcos Enage, not a single piece of evidence has been presented. Whether he signed or not the affidavit seen by stenographer Pedro Dayot in the Immigration Office or whether or not he sought the deportation of Ang Liongto, the facts intended to be proved are based only on the hearsay and uncorroborated testimony of said stenographer, which was timely objected by the defense. Even if it is true that Enage signed said affidavit and sought the deportation of Ang Liongto, such isolated facts do not show that Enage had any connection with the murder in question. Under the circumstances, the lower court committed a grave abuse of discretion in denying Enage's petition to bail, to which he is entitled as a constitutional right. (Section 1 [16], Article III of the Constitution.)

As to the six petitioners in L–2496, the lone testimony of James Young implicating them appears not to satisfy the constitutional requirement that the evidence of guilt must be strong in a capital offense in order that a court may be justified not to grant bail. The lower court itself could not pronounce the evidence strong. It considered it only "sufficient" a word that does not convey the idea involved in the constitutional requirement. Besides coming from a source inherently polluted, Young's testimony is not supported by any kind of corroboration and is weakened by some contradictions and improbabilities. The uncorroborated testimony of a self-confessed killer for reward, when tainted with contradictions and improbabilities, is not a strong evidence of a capital offense against his co-accused.

When the lower court, upon the prosecution's recommendation allowed the six petitioners to be bailed at ₱40,000 each, it is because the evidence attached to the information was not strong to justify denying bail. The testimony given by Young at the hearing of September 11, 1948, has not changed the situation. It has not added anything new

to the affidavits already attached to the information, which included those signed by James Young and Dy Too, where they ratify their declarations in the cases in which they were convicted, copies of which are attached to said affidavits.

The lower court was not justified in cancelling the bonds filed by the six petitioners and in doing so committed a grave abuse of discretion that we must correct.

In view of the result arrived at, there is no need of passing upon the other questions raised by petitioners, such as the direction of the prosecution at the hearing by the private lawyer of the offended party in the absence of the special prosecutor.

The order of the lower court of September 11, 1948, is set aside and it is ordered that Marcos Enage be allowed to bail in the sum of ₱40,000 and that, on approval of the bond he may accordingly file, he be immediately released and the cancellation of the bonds of petitioners Ang Tiong, Go Kam, Lim Peng, Te Chaye, Lo Bok and Sy Bio be revoked and that said petitioners are ordered immediately released upon said bonds.

This decision shall be executed immediately upon its promulgation.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, and *Briones, JJ.,* concur.

TUASON, *J.:*

I dissent. I don't find sufficient ground for departing from the salutory rule that the findings of facts of the trial judge must be respected.

Order set aside.

[No. 48122. October 29, 1948]

A. W. BEAM, A. W. BEAM, Jr., and EUGENIA BEAM, the latter two assisted by their guardian *ad litem,* JOHN W. HAUSSERMANN, plaintiffs and appellants, *vs.* A. L. YATCO, Collector of Internal Revenue of the Philippines, defendant and appellee.

1. CONFLICT OF LAWS; PLEADING OF A FOREIGN LAW IMPLIEDLY INCLUDES ALLEGATION OF CITIZENSHIP THEREOF.—The allegations necessarily include by implication the allegation of California citizenship so that the California law may be invoked as the personal law of the deceased applicable to her personal property in the Philippines in accordance with article 10 of the Civil Code.

2 EVIDENCE; EVIDENCE INTRODUCED WITHOUT OBJECTION BECOMES PROPERTY OF THE CASE.—Evidence introduced without objection becomes property of the case and all the parties are amenable to any favorable or unfavorable effects resulting from the evidence.

3. ID.; FAILURE TO PRESENT MORE EVIDENCE WHEN OPPORTUNITY HAD THEREFOR, CANNOT BE A GROUND FOR COMPLAINT.—Plaintiffs had in fact the opportunity, and taken advantage of it, to

present all the facts which, according to them, would entitle them to recover and they cannot complain of their failure to present more evidence than that appearing in the record.

4. CONFLICT OF LAWS; PRESUMPTION WHEN A FOREIGN LAW IS PLEADED.—When a foreign law is pleaded and no evidence has been presented as to said law it is presumed that the same is the law of the forum.

5. INHERITANCE TAX; HUSBAND AND WIFE; COMMUNITY PROPERTY; SUCCESSION UPON DEATH OF WIFE.—The properties in question which have been acquired by A. W. B. and wife during their marriage, should be considered as community property and upon the death of the wife, the one that belonged to her passed by succession to her heirs, in accordance with the provisions of articles 1401, 1407 and 1426 of the Civil Code, and therefore is subject to the inheritance tax.

6. CITIZENSHIP; UNDER THE DECTRINE OF "JUS SOLI" OR BY NATURALIZATION.—Under the provisions of the fourteenth amendment to the Federal Constitution, "all persons born or naturalized in the United States are subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

7. DOMICILE; REMOVAL OF FAMILY.—"One's personal presence at the new domicile is not necessary when the intent to change has been manifested and carried out by sending his wife and family there." (19 C. J., 425.)

8. CONFLICT OF LAWS; INHERITANCE TAX; "SITUS" OF PERSONAL PROPERTIES.—The question raised by appellants regarding the *situs* of the properties in question, has no merit in view of the express provisions of section 1536 of the Revised Administrative Code, specifying shares issued by any corporation or *sociedad anónima* organized in the Philippines among properties subject to inheritance tax. The pronouncement of the lower court that the actual *situs* of the shares in question is in the Philippines is fully supported by the evidence.

APPEAL from a judgment of the Court of First Instance of Manila. Abeto, J.

The facts are stated in the opinion of the court.

Ross, Selph, Carrascoso & Janda for appellants.

Solicitor General Roman Ozaeta and *Assistant Solicitor General Rafael Amparo* for appellee.

PERFECTO, *J.*:

On July 17, 1937, plaintiffs filed a complaint praying that the amount of ₱343,298.72, paid by them as inheritance tax, be refunded to them as follows: ₱40,480 to A. W. Beam, ₱151,409.36 to A. W. Beam, Jr., and ₱151,409.36 to Eugenia Beam.

In March, 1938, the parties entered into a stipulation of facts from which the following can be gathered:

That on or before April 26, 1937, the Collector of Internal Revenue declared and assessed the following items of property of A. W. Beam and Lydia McKee Beam at the time of the death of the latter on October 18, 1934, at ₱8,100,544.91:

15,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 2, 15 and 25 issued to and in the name of Lydia McKee Beam;

88,163 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 11, 23 and 24 issued to and in the name of A. W. Beam;

500 shares of stock of Benguet Consolidated Mining Company, evidenced by Certificate No. 3342 issued to and in the name of A. W. Beam;

2,080 shares of stock of Balatoc Mining Company, evidenced by Certificates Nos. 600, 614 and 809 issued to and in the name of A. W. Beam;

5,000 shares of stock of Beam Investment Company evidenced by Certificates Nos. 17 and 26 issued to and in the name of A. W. Beam, Junior;

Deposit of ₱2,933.18 in Manila Building and Loan Association in the name and to the credit of A. W. Beam, Junior;

5,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 19 and 27 issued to and in the name of Eugenia Beam;

Deposit of ₱2,933.18 in Manila Building and Loan Association in the name and to the credit of Eugenia Beam.

One-half thereof, appraised at ₱4,050,272.46, was the estate of the deceased Lydia McKee Beam located in the Philippines and transmitted to plaintiffs and to Syrena McKee and Rose P. McKee by virtue of inheritance, devise, or bequest, gifts *mortis causa* or advance in anticipation of inheritance, and the collector assessed and demanded inheritance taxes thereon as follows:

"Heirs	Share	Tax
A. W. Beam	₱531,375.00	₱40,480.00
A. W. Beam, Jr.	1,749,448.73	151,409.36
Eugenia Beam	1,749,448.73	151,409.36
Syrena McKee	10,000.00	200.00
Rose T. McKee	10,000.00	200.00
	"₱4,050,272.46	₱343,698.72"

On April 26, 1937, plaintiffs, together with Syrena McKee and Rose T. McKee, both sisters of Lydia McKee Beam, paid respectively the amounts assessed and demanded by the collector, aggregating ₱343,698.72, under protest that was overruled by the collector on May 11, 1937.

A. W. Beam is of age but the other two plaintiffs are minors and are assisted by their guardian *ad litem*, John W. Haussermann.

On her death in the State of California on October 8, 1934, Lydia McKee Beam left a last will and testament which, after due and regular proceedings, was admitted to probate in the superior court of the State of California for the County of Almeda.

Lydia McKee Beam was the wife of A. W. Beam from their marriage in 1913 until her death, and the other two plaintiffs are the legitimate children of said marriage.

Plaintiffs are, and since birth, have been, and Lydia McKee Beam was, throughout of her life, citizens of the United States of America. A. W. Beam was for many years, beginning from year 1902, a resident domiciled in the Philippines.

On April 18, 1934, A. W. Beam, with his wife Lydia and daughter Eugenia, left the Philippines for California and arrived at San Francisco on May 9, 1934, and since such arrival neither said Lydia nor any of the plaintiffs have been in the Philippines, except A. W. Beam who was in the Philippines from December 20, 1936, to January 15, 1937.

At the time of the death of Lydia McKee Beam, she and plaintiffs owned separately and severally according to plaintiffs, and jointly with Lydia McKee Beam and A. W. Beam, according to defendant, the following properties:

"LYDIA MCKEE BEAM: 15,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 2, 15 and 25 issued to and in the name of Lydia McKee Beam;

"A. W. BEAM: 88,163 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 11, 23 and 24 issued to and in the name of A. W. Beam; 500 shares of stock of Benguet Consolidated Mining Company, evidenced by Certificate No. 3342 issued to and in the name of A. W. Beam; 2,080 shares of stock of Balatoc Mining Company, Nos. 600, 614 and 809 issued to and in the name of A. W. Beam;

"A. W. BEAM, JUNIOR: 5,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 17 and 26 issued to and in the name of A. W. Beam, Junior; Deposit of ₱2,933.18 in Manila Building and Loan Association in the name and to the credit of A. W. Beam, Junior;

"EUGENIA BEAM: 5,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 19 and 27 issued to and in the name of Eugenia Beam; Deposit of ₱2,933.18 in Manila Building and Loan Association in the name and to the credit of Eugenia Beam."

The Beam Investment Company, the Balatok Mining Company and the Manila Building and Loan Association are, and were at all times mentioned in the amended complaint, corporations organized and existing under the laws of the Philippines. The Benguet Consolidated Mining Company is, and was at all times mentioned in the amended complaint, a *sociedad anónima* organized and existing under the laws of the Philippines.

The above-listed properties were acquired in the Philippines during and within the period from the marriage of A. W. Beam to Lydia McKee Beam in 1913 to April 18, 1934, A. W. Beam has been, and was up to April 18, 1934, the Vice-President and Assistant General Manager of the Benguet Consolidated Mining Company and a member of the Board of Directors of said company and of the Balatok Mining Company. He was also, and up to the present, is, the President of the Beam Investment Company.

Prior to his departure from the Philippines on April 18, 1934, with his wife and his daughter Eugenia, A. W. Beam filed an application for a tax clearance certificate with the Bureau of Internal Revenue.

On September 30, 1940, the lower court rendered decision dismissing the complaint with costs against the plaintiffs.

Plaintiffs appealed.

Appellants complain that the lower court dismissed the complaint on factual conclusions dealing with points not at issue between the parties. They allege that the issue of fact, under the pleadings, was between the appellants' contention that A. W. Beam and deceased wife were residents and citizens of California on October 18, 1934, and appellee's contention that their Philippine residence and domicile extended to October 18, 1934, and sometime later, and there was no issue as to whether or not said A. W. Beam changed his residence and domicile in 1923 from the Philippines to California and, therefore, the lower court erred in finding that appellant became a resident and citizen of California in 1923.

Appellee alleges that it has been his original theory from the inception of the action that the plaintiffs were and continued to be California citizens and that they are not entitled to recover on the ground that according to California law the property acquired by A. W. Beam in one-half thereof belongs to the deceased and passed by succession to her heirs subject to the inheritance tax, and said theory is borne out by the following allegations of the amended answers filed on September 2, 1937:

> "That under the Inheritance Tax Law, the defendant demanded and collected from the plaintiffs the sum of ₱343,698.72 alleged in the complaint, which had been assessed on the amount of ₱4,050,272.46, value of the estate of said Lydia McKee, *located and having business situs in the Philippines*, and transmitted to the plaintiffs by virtue of inheritance. (Pages 15, 16, record on appeal; italics added.)
>
> "That the law of the State of California in effect at the time of the death of Lydia McKee Beam provided that, upon the death of a wife, one-half of the community property shall go to the surviving spouse, the other half being subject to the testamentary disposition of the decedent, and that in the absence thereof, that half shall go to the surviving spouse by inheritance."

The last paragraph reproduces only the penultimate paragraph of the original answer dated October 11, 1937.

The allegations necessarily include by implication the allegation of California citizenship so that the California law may be invoked as the personal law of the deseased applicable to her personal property in the Philippines in accordance with article 10 of the Civil Code.

The finding of the lower court is fully supported by the testimonies of A. W. Beam and John W. Haussermann, wherein the first stated that in 1923 he bought a house in

Oakland, California, and used it as a residence until December, 1930, when he built another in Piedmont, California, which he has used and occupied as a residence since then, and his children were in school in California and Mrs. Beam wanted to be with them and made a home for them, and it was his intention to live in California and from 1923 on, his family spent most of their time in California, where he himself used to take long vacations, and that he never really intended to live permanently in the Philippines, while Haussermann testified that A. W. Beam left the Philippines somewhere along 1923 and 1924 when he established a home for his wife and children on Kenmore Avenue, Oakland, and he went there frequently.

We are of opinion that, upon the pleadings and the evidence, the lower court did not err in finding that A. W. Beam and wife became residents and citizens of California in 1923.

On the other hand, appellee maintains that, because the burden of proof is on the plaintiffs to establish their right to recover, in view of the fact that they had failed to establish that right based on their alleged Utah citizenship, the dismissal of the complaint is fully justified, and the defendant is entitled to take advantage of the plaintiff's failure to present sufficient proof and of the evidence adduced by themselves.

Plaintiff pleaded Utah citizenship to invoke the laws of that state which, it is alleged, is to the effect that properties acquired by the spouses during marriage belong to them separately, and the Utah citizenship was thus put in issue in view of the general denial of appellee and his special defense predicated on the California law.

The evidence of the plaintiff on the Utah citizenship consists exclusively in the deposition of A. W. Beam wherein he states that he was born in Nevada in 1878; he lived with his parents in Nevada until 1883 and then in Utah until 1898, when he enlisted in the army; and that upon his discharge from the army in San Francisco in 1889 he returned to, and stayed in, Utah, until he came to the Philippines in 1902. As contended by appellee, the evidence does not sufficiently prove the Utah citizenship claimed by said appellant. There is no evidence that he ever returned to Utah, or has any interest in that state, or that he ever intended to return there.

Where plaintiffs themselves show a state of facts upon which they should not recover, whether defendant pleaded such fact as a defense or not, their claim should be dismissed. Evidence introduced without objection becomes property of the case and all the parties are amenable to any favorable or unfavorable effects resulting from the evidence.

Appellants complaint that they were not given opportunity to present evidence regarding the fact found by the

lower court that plaintiff A. W. Beam became in 1923 a resident and citizen of California has no merit, because plaintiffs had in fact the opportunity, and taken advantage of it, to present all the facts which, according to them, would entitle them to recover and they cannot complain of their failure to present more evidence than that appearing in the record. As a matter of fact, the evidence upon which the lower court concluded that A. W. Beam became resident and citizen of California in 1923, consists in the testimony of A. W. Beam himself and his witness John W. Haussermann.

Appellants contend that no evidence whatsoever has been adduced to prove the California law of community property and that the trial court should not have taken into consideration the provision of said law as quoted in the memorandum filed by the Solicitor General. Appellee alleges that there is no dispute that California is a community property state, citing 31 C. J., 12 and the decision in Osorio *vs.* Posadas (56 Phil., 748 and 756). Appellants themselves assert that, in the absence of proof as to what the California law is, the presumption would militate against them, because when a foreign law is pleaded and no evidence has been presented as to said law it is presumed that the same is the law of the forum. (Yan Ka Lim *vs.* Collector of Customs, 30 Phil., 46; Lim *vs.* Collector of Internal Revenue, 36 Phil., 472; Miciano *vs.* Brimo, 50 Phil., 867.)

Accordingly, the properties in question which have been acquired by A. W. Beam and wife during their marriage, should be considered as community property and upon the death of the wife, the one that belonged to her passed by succession to her heirs, in accordance with the provisions of articles 1401, 1407 and 1426 of the Civil Code, and therefore is subject to the inheritance tax collected by appellee.

Appellants contended that A. W. Beam has not become a resident and citizen of California since 1923 and that the evidence points out that he changed his residence from the Philippines to California between the time he left Manila for Piedmont on April 18, 1934, and the time of his wife's death on October 18, 1934. Appellants point to the testimony of A. W. Beam that his departures before 1934 were without intention of permanently abandoning his home in the Philippines, while when he left on April 18, 1934, he had no intention of returning, for which reason he brought his car and all his household belongings with him, and to the testimonies of Robert B. Dell, John W. Haussermann, W. H. Taylor, W. H. Lawrence. These testimonies, all hearsay, except that of A. W. Beam himself, notwithstanding, cannot change the effect of A. W. Beam's testimony to the effect that in 1923 he bought a house in Oakland, California, used it as a residence until

December 1930, when he built another house in Piedmont, California, which he used and occupied as a residence from that time to the present, and that his children were in school in California and Mrs. Beam wanted to be with them and make a home for them, and from 1923 on his family spent most of their time in California. He also testified that "he never really intended permanently to live in the Philippines all my life." Under the provisions of the fourteenth amendment to the Federal Constitution, "all persons born or naturalized in the United States are subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

A. W. Beam became citizen of California in 1923 when he established therein a permanent residence for him and his family.

"One's personal presence at the new domicile is not necessary when the intent to change has been manifested and carried out by sending his wife and family there." (19 C. J., 425.)

As correctly stated by appellee, even granting appellant's contention that the deceased became a resident of California only in 1934, she was a citizen of that state at the time of her death and her national law applicable to the case, in accordance with article 10 of the Civil Code, is the law of California which, in the absence of contrary evidence, is to be presumed to be the same as the Philippine law.

The question raised by appellants regarding the *situs* of the properties in question, has no merit in view of the express provisions of section 1536 of the Revised Administrative Code, specifying shares issued by any corporation or *sociedad anónima* organized in the Philippines among properties subject to inheritance tax. The pronouncement of the lower court that the actual *situs* of the shares in question is in the Philippines is fully supported by the evidence as, according to the testimony of John W. Haussermann, the corresponding certificates of stock were in the Philippines before and after the death of Mrs. Beam, the owners were represented by proxy at the stockholders' meetings and their shares voted by their attorney in fact who had the power to collect dividends corresponding to the share.

The questions raised by appellants that are premised on the Utah citizenship of A. W. Beam and his deceased wife cannot be countenanced after we have concluded that the lower court declared correctly that they became California citizens since 1923.

The lower court's decision is affirmed with costs against appellants.

Parás, Feria, Pablo, Bengzon, Briones, and *Tuason, JJ.,* concur.

Judgment affirmed.

DECISION OF THE ELECTORAL TRIBUNAL OF THE HOUSE OF REPRESENTATIVES

[Electoral Case No. 7. February 15, 1949]

GENARO VISARRA, protestant, *vs.* LUIS T. CLARIN, protestee

1. ELECTIONS; PROTEST; PLEADING AND PRACTICE; GROUNDS NOT ALLEGEDLY WITHIN THE PURVIEW OF PARTIES' RESPECTIVE ALLEGATIONS, TAKING COGNIZANCE OF.—"The institution of popular suffrage is one of public interest and not a private interest of the candidates, so that if in the revision of the ballots some illegal ballots are found which have not been specifically impugned in the motion of protest, the court may reject them *motu proprio*, since it is not essential that the contestant set forth the grounds of his contest with the same precision required of a pleading in ordinary civil cases. The trial court, then, did not err in taking into account in the revision of the ballots, irregularities not set forth in the motion of protest." (Yalung *vs.* Atienza, 52 Phil., 781.)
2. ID.; ID.; APPRECIATION OF BALLOTS; COMMISSION OF SERIOUS FRAUDS AND IRREGULARITIES INTOLERABLE; CLEAN AND HONEST ELECTION AS THE LIFE-BLOOD OF DEMOCRACY.—The revision of the ballots in Precincts Nos. 1, 2 and 3 of Dauis unerringly reveals the commission of serious frauds and irregularities during the election in said precincts. We cannot help but feel outraged by the extent of these frauds. Clean and honest election constitutes the very life-blood of democracy and the government can not be too overzealous in preserving its purity. Only thus may we preserve the sovereignty of the people which is consecrated in our Constitution. If allowed to go unpunished, the day may soon come when, like a cancerous growth, it will poison the entire body politic. When that day comes, bloody and fratricidal revolution may ensue and only the scalpel of radical surgical operation performed by an outraged people can afford the remedy.

ORIGINAL CASE of the Electoral Tribunal for the House of Representatives.

The facts are stated in the opinion of the tribunal.

Hector C. Suarez for protestant.
Roxas, Picazo & Mejia for protestee.

PRIMICIAS, *M.:*

The protestant, Genaro Visarra, and the protestee, Luis T. Clarin, were opponents for the office of Representative for the first district of Bohol in the national elections held on April 23, 1946. There were six other contenders for the same position but they have not intervened in the instant proceedings. The protestee, Luis T. Clarin, was proclaimed by the provincial board of canvassers of Bohol the duly elected representative for the district with a plurality of fifteen (15) votes over the protestant, their respective votes having been 4,462 and 4,447; and the said protestee assumed office upon the strength of such proclamation.

Protestant contested protestee's election in due time and form alleging:

"(*a*) Luis T. Clarin and/or his political followers employed threat, intimidation and force carrying with them arms like carbine, Thompson, to coerce electors to vote in favor of Luis T. Clarin in each and everyone of the ten precincts;

"(*b*) Absent electors were substituted by others who were in favor of Luis T. Clarin in casting their votes, in each and every one of the ten precincts;

"(*c*) Minors, under 21 years of age, were allowed to register and cast their votes in favor of Luis T. Clarin in each and every one of the ten precincts;

"(*d*) Voters who had written on their ballots in the space corresponding to the office of Representative the names of candidates Genaro Visarra, Ramon Nazareno, Pio Ferandos, Jose V. Muana, Bernardo Jozol, Gaudencio Cloribel and Elpidio Arbitrario were forced by means of threat of bodily harm by the protestee's followers to cross out or cancel the names so written or votes intended for anyone of them, and to write the name of Luis T. Clarin over the name first written, in each and everyone of the ten precincts;

"(*e*) Voters who had written the names of Genaro Visarra, Ramon Nazareno, Pio Ferandos, Jose Muana, Bernardo Josol, Gaudencio Cloribel and Elpidio Arbitrario in the proper line or space for Representative were forcibly made to ask for other ballots while the first ballots were intentionally soiled by the followers of Luis T. Clarin. In the second ballot, the elector was coerced to write the name of the herein protestee, Luis T. Clarin, in each and every one of the ten precincts;

"(*f*) Several stray votes of Luis T. Clarin were counted and maliciously credited as votes in his favor in each and everyone of the ten precincts:"

As additional ground, it is also alleged:

"4. The herein protestant alleges and so holds that if the actual number of valid votes cast in the municipalities of Dauis and Panglao was properly and legally counted, and/or no force was employed in the election in these municipalities, the protestant would have obtained a safe plurality of votes over those of the protestees, and consequently would have been declared elected as Member of the House of Representatives for the first district of Bohol."

Protestee duly answered the protest and alleged, by way of counter-protest, the following:

"1. Que en todos y cada uno de los precintos electorales de los municipios de Tagbilaran, Corella, Cortes, Maribojoc, Calape, Baclayon y Antequera, un gran número de balotas en las cuales el recurrido había sido votado para el cargo de Representante, fueron leidas como balotas emitidas a favor del recurrente, adjudicando así al mismo las citadas balotas.

"2. Que en todos y cada uno de los precintos electorales anteriormente mencionados, un gran número de balotas, legalmente emitidas a favor del recurrido, fueron arbitrariamente rechazadas como balotas marcadas, y las mismas han sido colocadas en las urnas Rojas.

"3. Que en los municipios de Maribojoc, Calape, Corella, Antequera y Tagbiliran, el recurrente, para asegurar su triunfo, ha sobornado y comprado los votos de unos mil electores a quienes también ha regalado telas y ropas de UNRAA."

PRELIMINARY QUESTION

There has been much discussion between the parties regarding their respective right to question the ballots of the other upon grounds not allegedly within the purview of their respective allegations. So, each of the parties contended that neither one nor the other may question his opponent's ballots on the specific ground that one or more ballots have been written by the same hand or that a particular ballot has been prepared by two hands. Protestant contended that these grounds of objection are included within the purview of his allegation of supplantation and substitution of voters,—an allegation which was not made by the contestee in his counter protest.

We think this question to be now well settled in this jurisdiction and is no longer controversial. In Roque *vs.* Lim, case No. 11 of this Tribunal, the same question has been presented and thoroughly threshed out; and on April 22, 1947, quoting from the decision of the Supreme Court of the Philippines in the case of Yalung *vs.* Atienza, 52 Phil., 781, by a unanimous ruling of the nine members of this Tribunal, we said:

"The protestee has presented the amended motion of his counter protest stating additional grounds, particularly, that ballots of the protestant found in the precincts counter protested have been written by the same hand. To this amended motion of the protestee, the protestant objects on the ground that the said amendment brings in different and additional grounds from those originally alleged in the counter protest.

"As appears from the records of this case, the court, upon petition of the protestant, has granted to him by resolution the right to reexamine the protested ballots, employing for that purpose a handwriting expert; but at the same time the tribunal likewise granted to the protestee the same right and under the same conditions as tnose granted to the protestant with regard to the latter's ballots supposedly written by the same hand. After examining the record and taking note of the new ground for the amended motion of protest, it is apparent that the said amended motion of counter protest is not even necessary to entitle the protestee to contest the ballots of the protestant in the said counter protested precincts and those in the protested precincts on the ground that they were written by the same hand, because if they were so written such fact can be noted upon seeing the ballots themselves. In other words, such defects of the ballots can be considered by this Tribunal as a ground for rejecting the same *motu propio*. This principle has been decided by the Supreme Court as follows:

" 'The institution of popular suffrage is one of public interest and not a private interest of the candidates, so that if in the revision of the ballots some illegal ballots are found which have not been specifically impugned in the motion of protest, the court may reject them *motu proprio*, since it is not essential that the contestant set forth the grounds of his contest with the same precision required of a pleading in ordinary civil cases. The trial court, then, did not err in taking into account in the revision of the ballots, irregularities not set forth in the motion of protest.' (Yalung *vs.* Atienza, 52 Phil., 781.)

"In view of the foregoing, the tribunal resolves to enforce its resolution denying the motion for reconsideration presented by the protestant, allowing the protestee to object to such ballots in this case as he considers illegal without the necessity of admitting the amended motion of counter protest."

We reiterate our adherence to this rule as a sound judicial policy enabling this body to determine, in appropriate matters brought to it, the real choice of the people. As regards protestee's petition, filed during our deliberations on the case after the same has been submitted for decision, to be accorded anew the opportunity to file his objections to protestant's ballots in the light of the above ruling, we find that protestee (1) is estopped from doing so by the stipulation of the parties of February 7, 1948, which would otherwise be affected by the granting thereof. In the said stipulation, the parties formally agreed on the number of contested and valid ballots in each of the precincts involved and none of the parties should be permitted to go back on said agreement; (2) actually has not been deprived of the right to object to protestant's ballots on every conceivable ground, as shown by the Report of Revision, the record of the hearing when the parties offered their respective ballots as evidence and made their mutual objection, and protestee's own memorandum which contains an exhaustive litany of objections to pretestant's ballots including those expressly impugned as above stated. The transcript of the stenographic notes taken during the hearing of the case before the First Division of this Tribunal on January 15, 1948, also contain an unmistakable agreement of the parties as to what ballots could be considered contested. The pertinent part of the transcript reads as follows:

"Mr. PRIMICIAS: Do you mean to limit the objections only on those mentioned in the report including those reserved?

"Atty. SUAREZ: Provided there is reservation.

"Mr. PRIMICIAS: What do you say?

"Atty. DE ASIS: It is all right, Your Honor.

"Mr. PRIMICIAS: The parties agree that objections to ballots of the other party may only be made as to ballots objected to during the revision and as to those appearing in the revision of the commissioners. It is understood that where the objections to ballots have been reserved, they may also be objected to at this hearing;"

(3) would thereby obtain a reopening of the ballot boxes and a further delay without any useful purpose to the prejudice of the administration of justice.

With this preliminary matter disposed of, the case becomes a question of appreciation of ballots. There has been, it is true, an attempt on the part of the protestant to prove with parole evidence in the form of depositions that threat, intimidation and violence vitiated the election in the municipality of Dauis, but this attempt has only been half-hearted, to say the least, and protestant's counsel

in his memorandum, without waiving his right to question particular ballots on the ground of fraud, candidly admitted the futility of insisting upon his prayer to set aside the election in Dauis. We now proceed, therefore, to consider the ballots of the parties or so much thereof as may be necessary to arrive at a just and correct decision. These ballots have been duly and properly revised by commissioners appointed by the Tribunal under the supervision of the Secretary of the Tribunal.

It must be stated that were we to pass upon each and everyone of the ballots contested in the precincts involved in the protest and counter-protest, which ballots number 461 in all, the instant case would drag on for an unlimited length of time to the prejudice of the speedy administration of justice. This fact notwithstanding, we would have done so as speedily as we could, consistent with justice and fairness if we saw the necessity therefor. But, as hereafter will be shown, after passing upon the questioned ballots in the first three (3) precincts of the municipality of Dauis and those involved in the counter protest, it became pointless and bereft of useful purpose to pass upon the questioned ballots in the other precincts involved in the protest.

Dauis, Precinct No. 1

According to the election returns, the parties received in this precinct the following votes credited to them by the Provincial Board of Canvassers of Bohol, to wit:

Visarra	1
Clarin	329

By agreement of the parties dated February 7, 1948, Visarra obtained in this precinct only one (1) vote which was contested and marked Exhibit V–1, and Clarin obtained a total of 327 votes, 24 of which were contested and marked Exhibits C–4 to C–11, C–13 to C–16, C–19 to C–21, C–26, C–32 to C–33, C–38, C–45 to C–48 and C–126.

Appreciation of Ballots

V–1. This ballot is objected to as having been written by two (2) hands. The objection is not well taken and the ballot is valid.

C–4. Objected to as having been written by two (2) hands. Ojection is overruled and ballot is admitted.

C–5. Objected to on the same ground. Same resolution.

C–6. Objected to on the same ground. Same resolution.

C–7. Objected to on the same ground. We find the objection well taken. "r rosas" on line for President, "E on" on line for Vice President and "Lis Clrin" on line 1 for senator were written by a person who can hardly write. "Roxas" on line for President

and "Luis Claren" on line for representative were written by a good amanuensis. In conformity with the majority ruling in *Confesor vs. Lutero,* case No. 15 of this Tribunal, this ballot is rejected.

C–8. Objected to as stray vote, protestee's name appearing on the line for Vice President. The name "Olegario Clarin" a candidate for senator appears on the line of representative.
Ballot is rejected.

C–9. Objected to as having been prepared by two (2) hands and on the further ground that only the word "Clarin" appears written on the line for representative. The first ground of objection is well taken. The name "Clarin" on the line for representative was written by a relatively good writer while the rest of the names appearing on the ballot was written by an awkward writer. Ballot rejected which makes it unnecessary to pass upon the second ground.

C–10. Objected to on the same ground (two hands). After this ballot was filled by one person who voted for "B. Josol" for representative, another person erased the said name and superimposed on it the word "Clarin." The difference in handwriting is very palpable. Ballot rejected.

C–13. Objection withdrawn. Ballot admitted.

C–14. Objected to as written by two (2) hands. While there is a semblance of merit in the objection, there is doubt as to its certainty and we resolve the doubt in favor of the validity of the ballot. Admitted.

C–15. Objected to on the same ground (two hands). "M Roras" on the line for President, "E. Quirino" on the line for Vice President, "loss Carun", crossed out, on line for representative and "Oligario Clarin" on line one for senator were written by one person. "L Clarin" written above the cross out "loss Carun" was made by another person. Objection sustained, and ballot rejected.

C–20, C–21. These two (2) ballots were rejected to on the ground that they were prepared by one and the same person. The identity of handwriting including the strokes, characteristics and other features is clear. Objection sustained and both ballots are rejected.

C–38, C–126. These ballots together with ballots C–36, C–37, C–38, C–39, C–40 and C–41 of Precinct No. 2 of Dauis and C–50 of Precinct No. 3 of Dauis or a total of nine ballots were objected to on the ground that they have been prepared by one and the same person. We find the objection well taken.

It is clear that this person wrote ballots in the three (3) precincts of Dauis above mentioned. Precints Nos. 1 and 2 were located in the same school building and Precinct No. 3 in the adjacent domestic science building, hence, there was facility in the commission of fraud. All nine (9) ballots are rejected.

C–46, C–47. These two ballots together with C–16, C–17, C–18, C–19 and C–20 of Precinct No. 2 of Dauis, and C–49 of Precinct No. 3 of Dauis or a total of eight (8) ballots were objected to as having been written by one and the same person. The objection is clearly sustained by the ballots, except as regards ballot C–19 of Precinct No. 2 about which there is doubt and we resolved the doubt in favor of the validity of the ballot. In like manner, this person has been writing ballots in the three precincts of Dauis above mentioned. The remaining seven (7) ballots are rejected.

C–45. This ballot is objected to on the ground that it was prepared by the same person who wrote ballots C–19 and C–67 of Precinct No. 3 of Dauis. We find the objection without merit. Ballot admitted.

C–11, C–26, C–33. It is alleged that the name "Roxas" on the line for President in each of these ballots was written by one and the same person. Objection overruled and the three (3) ballots are admitted.

C–16, C–19, C–32, C–48. Objections withdrawn. These four (4) ballots are admitted.

According to the foregoing, the parties obtained in this precinct the following valid votes:

Visarra	1
Clarin	316

The total improvement in protestant's position so far is 13 votes.

Dauis Precinct No. 2

According to the election returns, the parties received in this precinct the following votes credited to them by the Provincial Board of Canvassers of Bohol, to wit:

Visarra	0
Clarin	348

By agreement of the parties dated February 7, 1948, Visarra obtained no vote in this precinct, altho one ballot classified as contested ballot for the protestee, which is ballot C–2, is being claimed by the protestant (memorandum page 11); and Clarin obtained a total of 348 votes, 40 of which were contested and marked Exhibits C–1 to C–6, C–8 to C–22, C–27 to C–29, C–34 to C–44, C–48, C–54, C–72, C–154 and C–207.

Appreciation of Ballots

C–1. Objection sustained, "Clarin" having been written on the space for vice-president. Stray vote. Ballot rejected.

C–2. In this ballot the name "G. Visarra" appears written on the line for representative, but it was crossed out and the name "Clarin" was written by another hand after the crossed out name. The other names in the ballot on the line for President and Vice President and first senator were written by the same hand who wrote the name "G. Visarra" on the line for representative. This ballot sustains protestant's allegation in paragraph (*d*) of his protest, and because of this circumstance, both parties claimed this ballot.

As the ballot appears, it is clear that it was written by two (2) hands. As regards protestee, therefore, the ballot is rejected. (*Confesor vs. Lutero,* case No. 15.) As regards protestant, we find no reason why the voter who wrote his ballot properly should be penalized. We vote to rehabilitate the voter's vote and count this ballot as a valid vote for the protestant.

C–3. Objected to as having been written by two (2) hands. "S. Osmeña" "L. Salvador" were originally voted for President and representative, respectively. Another person crossed out said names and superimposed on them the words "Roxas" and "L. Clarin", respectively. The objection is sustained and the ballot is rejected.

C–4. Objection on the same ground. "Nazareno," the name of one of the candidates for representatives, was originally written on the line for representative, but the said name was crossed out and another hand wrote the word "Clarin" after the theori-original name. Objection sustained and ballot rejected.

C–5. Objected to on the same ground (two hands). Objection overruled and ballot admitted.

C–6. Objected to on the same ground (two hands). Objection overruled and ballot admitted.

C–8. Objected to on the same ground (two hands). In this ballot the voter first wrote the names "Manuel Roxas," "Elpidio Quirino" and "Luis Clarin" on the lines for President, Vice President and Representative, respectively. Then he crossed out the said names and re-wrote them on the lines for senator in the same order. Thereafter another person, seeing an opportunity to capture one (1) more vote for the protestee, wrote the word "Clarin" after the crossed out "Luis Clarin" on the line for Representative. It is clear that the ballot was

prepared by two (2) hands. Objection sustained and ballot rejected.

C–9. Objected to on the same ground. The words "Roxas" and "Luis Clarin" on lines for President and Representatives, respectively, were written by one (1) person, and the words "Quirino" on the line for Vice President and "Clarin" and "Cuenco" on the first and second lines for senator were written by another person. Objection sustained and ballot rejected.

C–10. Objected to on the same ground. The names "Roxas" on line for President and "Cuenco" and "Clarin," on lines 1 and 2 for senator were written by one person and the name "Luis Clarin" on the line for representative was written by another person. Objection sustained and ballot rejected.

C–11. Same objection. The names "Osmeña," "Rodriguez," "Garcia," and "Clarin" on the lines for President, Vice President, Representative and second line for Senator, respectively, were written by one person, while another wrote the names of "L. Claren" and "O. Claren" and "Garcia" on the line for representative and senators, respectively. Objection sustained and ballot rejected.

C–12. Same objection. We find the objection not well founded and the ballot is admitted.

C–13. Same objection. The names "Roxas" on line for President, "Luis Calrin" on line for Vice President were written by one person, while the names "Quirino" on line for Vice President, "L. Clarin" on line for Representative and "O. Clarin" on first line for Senator were written by another person. Objection sustained and ballot rejected.

C–14. Same objection. The names "Roxas," "Quirino," and "Clarin" on lines for President, Vice President and Representative, respectively, were written by one hand, while the names "N Robas," "E. Quirino" and "Lues ClaRen" on lines 1, 2, and 3 for senator, respectively, were written by another person. Objection sustained and ballot rejected.

C–15. Same objection. The names "Manuel Roxas," "E. Quirino" and "Luis T. Clarin" on the lines for President, Vice President and Representative, respectively, were written by one person, while the names "M. Roxas," "E. Quirino" and "Luis ClaRin" on lines eleven, twelve and thirteen for Senator, respectively, were written by another person. Objection sustained and ballot rejected.

C–16, C–17, C–18, C–19, C–20. These ballots were already considered in connection with ballots C–46 and C–47 of Precinct No. 1 of Dauis. With the exception of ballot C–19, the other four (4) ballots are rejected.

C–21, C–22. Objection withdrawn. Ballots admitted.

C–27, C–28, C–29. Objected to as written by one and the same person. An examination of these three (3) ballots shows that the objection as regards C–27 and C–28 is well taken, but is overruled as to ballot C–29. Ballots C–27 and C–28 are rejected and C–29 admitted.

C–34, C–35. Objected to as having been written by one and the same hand. In the absence of the new member relieving Mr. Justice Sabino Padilla who was appointed Secretary of Justice, our vote on these two ballots was four to four. We held our ruling on these two ballots in abeyance until we find it necessary to break the deadlock should the contest become a close one.

C–36, C–37, C–38, C–39, C–40, C–41. These ballots were considered in connection with ballots C–38 and C–126 of Precinct No. 1 and we there concluded that they were written by one and the same hand. Ballots rejected.

C–42. "L. Clarin" appears written on the line for Vice President. Stray vote. Ballot rejected.

C–43, C–44. Objections withdrawn. Ballots admitted.

C–58. Objection as written by two (2) hands. This ballot is similar to ballot C–2 of this precinct. The name "Clarin" on the line for representative was written by one person and the rest of the ballot by another person. Objection sustained and ballot rejected.

C–54. Same objection. Like in the case of ballots C–34 and C–35 of this precinct, our vote on this ballot was four to four. We make the same comment.

C–72, C–154. Same objections. We find that in each of these ballots there are subsequent insertions of names by a person other than the original voter. Objection sustained and ballots rejected.

C–207. Same objection. We find the objection without basis, and ballot is admitted.

C–1–Red Box.—This ballot was found in the red box. It is marked spoiled and bears undetachable coupon No. 534. According to the election returns, 349 voters voted in this precinct and in the white box, there are already 349 ballots. This ballot is clearly a spoiled ballot and is rejected.

According to the foregoing, the contending parties obtained in this precinct the folowing:

Visarra	1
Clarin	318

(Besides the three ballots C–34, C–35 and C–54 being held in abeyance.)

The total improvement in protestant's position in this precinct is 31 votes which might be reduced by three (3)

votes if the three ballots being held in abeyance above mentioned will finally be counted in favor of the protestee.

Dauis Precinct No. 3

In accordance with the election result as proclaimed by the Provincial Board of Canvassers of Bohol, the parties received in this precinct the following votes:

Visarra	0
Clarin	341

In the stipulation of the parties, the parties agreed to the fact that Visarra received no vote in this precinct, while Clarin obtained a total of 340 votes, 42 of which were contested and marked Exhibits C–2, C–5 to C–25, C–31, C–33 to C–34, C–37 to C–50, C–52, C–65 and C–67.

Appreciation of Ballots

C–2. Objected to as stray vote. The name "Luis Clarin" in mechanical letters appears written on line thirteen (13) for senator. Objection sustained and ballot rejected.

C–5. Same objection. The name "Luis Clarin" is written on the line for Vice President. Objection sustained and ballot rejected.

C–6. Objected to as having been written by two (2) hands. The ballot clearly appears to have been written not by two hands but by three hands. Objection sustained and ballot rejected.

C–7. Same objection. The names "M. Rojaz" on line for President, "Lois Clarin" on line for representative and "Clarin" on line one (1) for senator were written by one person, while the name "Cuenco" on line for senator was written by another person. Objection sustained and ballot rejected.

C–8. Same objection. The names "M. Roxas" on line for president and "Luis Clarin" on line for vice president were written by one person, but the names "L. Clarin" on line for representative and "Cuenco" and "Clarin" on lines 1 and 2 for senator were written by another person. Objections sustained and ballot rejected.

C–9. Same objection. Like in the case of ballots C–34, C–35 and C–54 of Precinct No. 2, our vote on this ballot was 4 to 4 resulting in a deadlock. We hold our ruling on these two (2) ballots in abeyance until it becomes necessary to break the deadlock should the contest become a close one.

C–10. Same objection. Objection is overruled and the ballot is admitted.

C–11. Same objection. The names "M. Ruxas" on line for president and "Luis Clarin" on line for representative were written by one person, while the

names "Quirino" on line for vice president, "Cuenco" and Clarin on lines 1 and 2 for senator, by another person. Objection sustained and ballot rejected.

C–12. Same objection. Our vote on this ballot was also 4 to 4. We hold our ruling in abeyance, in the same manner as bollot C–9.

C–13. Same objection. The names "M. Roxas" and "E. Quirino" on lines for president and vice president, respectively, were written by one person, while the name "L. Clarin" on line for representative was written by another person. Objection sustained and ballot rejected.

C–44. Same objection. The names "M. Rohas" on the line for president, "e quirino" on the line for vice president and "Luis Clarin" on the line for representative were written by one person, while the names "Cuenco" and "O. Clarin" on the first and second lines for senator were written by another person. Objection sustained and ballot rejected.

C–15. Same objection. This ballot appears clearly written by two persons. Objection sustained and ballot rejected.

C–16. The name "Cuenco" on the second line for senator was written by one person, while the rest of the names on the ballot were written by another. Objection sustained and ballot rejected.

C–17. Same objection. Our vote on this ballot having been 4 to 4, resulting in a deadlock, we hold in abeyance our ruling thereon as in the case of ballots of the same nature.

C–18. Same objection. The names "Roxas" on the line for president, "Quirino" on the line for vice president and "Luis Clarin" on the line for representative were written by one person, while the names "O. Clarin" and "Cuenco" on the first and second lines for senator were written by another person. Objection sustained and ballot rejected.

C–19. Same objection. The name "Luis Clarin" written up side down on line fifteen for senator was written by one person, while the rest of the names appearing on the ballot written in the correct position were written by another person. Objection sustained and ballot rejected.

C–20. Same objection. The names "Luis Clarin" on line for vice president, and "Osmeña" on line for representative, were written by one person, while the names "Roxas" on line for president "L. Clarin" on the line for representative over the name "Osmina" which was crossed out and "Cuenco" and "O. Clarin"

on the lines for senator were written by another person. Objection sustained and ballot rejected.

C–21. Same objection. We find the objection not well taken. Ballot admitted.

C–22. Objection withdrawn. Ballot admitted.

C–23. Same objection. The name "Roxas" on line for president was written by one person while the rest of the names appearing thereon were written by another. Objection sustained. Ballot rejected.

C–24. Same objection. The name "Cuenco" on the line 5 for senator was written by one person, while all the rest of the names appearing on the ballot were written by another person. Objection sustained. Ballot rejected.

C–25. Same objection. The names "Roxas" on line for president, "Cuenco" and "Clarin" on line for senators were written by one person, while the names "Luis" on line for vice president and "Clarin" on line for representative were written by another person. Objection sustained and ballot rejected.

C–31. Same objection. We find the objection not well taken. Objection is overruled. Ballot admitted.

C–33. Same objection. The names "Roxas" on the line for president, "Luis Clarin" on the line for representative and "Cuenco" on the line for senator were written by one person, while the names "Sotto," "Francisco," and "Clarin" on the lines for senator were written by another person. Objection sustained. Ballot rejected.

C–34. Objected to on the ground that two names, namely, "Cuenco" and "luis clarin" were written on the space for representative and it is alleged that the same should not be counted as a vote for either. Our vote on this ballot was deadlocked and was held in abeyance in like manner as similar ballots previously adverted to.

C–37, C–38, C–39, C–40, C–41, C–42, C–43, C–44, C–47, C–48. These ten (10) ballots were objected to on the ground that they were all written by one and the same person. With the exception of ballot C–48, over which our vote resulted in a tie and is therefore being held in abeyance, we find the objection as to the other nine (9) ballots well founded and are therefore rejected.

C–45, C–46. Same objection as having been written by one and the same person. Our vote on these two ballots similarly resulted in a tie. Our ruling thereon is held in abeyance likewise.

C–49. This ballot was considered in connection with ballots C–46 and C–47 of Precinct No. 1 of Dauis, C–16,

C–17, C–18, C–19 and C–20 of Precinct No. 2 of Dauis, and we there held that this ballot was written by the same person who wrote the said ballots. Ballot rejected.

C–50. This ballot was also considered in connection with ballots C–38 and C–126 of Precinct No. 1 of Dauis and Ballots C–36, C–37, C–38, C–39, C–40 and C–41 of Precinct No. 2 of Dauis, and we there held that this ballot was written by the same person who wrote the said ballots. Ballot rejected.

C–52. Objected to as having been written by the same person who wrote the insertions on ballot C–154 of Precinct No. 2 of Dauis. We find the objection well founded. Ballot rejected.

C–65. Objected to as having been written by the same person who prepared ballots C–20 and C–21 of Precinct No. 1 of Dauis. Objection overruled. Ballot admitted.

C–67. Objected to as having been prepared by the same person who prepared ballots C–45 of Precinct No. 1 and C–19 of this precinct. Objection overruled. Ballot admitted.

C–1, C–2–Red Box.

In this precinct there were 201 voters who voted, while there were 199 ballots found in the white box. Those two ballots were therefore rejected ballots, erroneously placed in the red box. They are objected to, however, on the ground that they are stray votes, the name of protestee being written upside down on the space for senator, leaving the space for representative in blank. Objection sustained. Ballots rejected.

C–3. Red Box

This ballot is really spoiled ballot. It is so marked and still has the undetached coupon. If considered as rejected ballot erroneously placed on the red box, as claimed by protestee, we would have more ballots than the number of voters who voted. Ballot rejected.

In accordance with the foregoing, the parties obtained in this precinct the following valid votes:

Visarra	0
Clarin	304

(besides the seven (7) ballots marked C–9, C–12, C–17, C–34, C–48, C–45 and C–46 being held in abeyance.)

The total improvement in protestant's position in this precinct is 37 votes subject to reduction by seven (7) votes if the seven ballots being held in abeyance above mentioned will finally be counted in favor of the protestee.

SUMMARY OF THREE PRECINCTS (1, 2 AND 3) OF DAUIS

Summarizing the result of our appreciation of the ballots in Precincts Nos. 1, 2 and 3 of Dauis, we find that protestant Visarra made a gain of one (1) vote and that protestee Clarin suffered a reduction of 80 votes, without counting the ten (10) ballots claimed by him which are being held in abeyance. On the other hand, according to the proclamation of the Provincial Board of Canvassers of Bohol, the plurality of protestee over protestant was only fifteen (15) votes. Protestant Visarra has already in his favor, therefore, a difference of 66 votes. It becomes clear that our final ruling on the ten (10) ballots being held in abeyance will not affect the result, unless in his counter-protest protestee can make up for the difference. It becomes unnecessary for us, therefore, to consider the conflicting claims of the parties as regards the other precincts involved in protestant's protest, in view of the result we have arrived at in our consideration of protestee's counter-protest, as will forthwith be shown.

COUNTER PROTEST

The municipalities and precincts involved in the counter protest are:

Tagbilaran	Precincts Nos. 1 to 15;
Calape	Precincts Nos. 1 to 16;
Cortes	Precincts Nos. 1 to 7;
Baclayon	Precincts Nos. 1 to 11;
Corella	Precincts Nos. 1 to 6;
Maribojoc	Precincts Nos. 1 to 12;
Antequera	Precincts Nos. 1 to 9;

In the following municipalities and precincts, by stipulation of the parties, there are no contested ballots claimed by either of them:

Tagbilaran	Precincts Nos. 1, 3, 7, 8, 9, 11, 12 and 15.
Calape	Precincts Nos. 5, 6, 8, 9, 11, 13 and 15.
Cortes	Precincts Nos. 2 and 7.
Baclayon	Precincts Nos. 1, 3 and 5.
Corella	Precincts Nos. 2 and 6.
Maribojoc	Precincts Nos. 2, 3, 5, 7, 11 and 12.
Antequera	Precincts Nos. 1 and 2.

The following table will show the final numbers of votes received by the parties in the above mentioned precincts where there are no contested ballots claimed by the parties, as compared to the number of votes credited to each of them in the proclamation of the Provincial Board of Canvassers of Bohol, showing at a glance the improvement, if any, in the position of each of the parties, to wit:

TABLE 1.—*Final votes of the parties in counter protested precincts without contested ballots claimed according to stipulation as compared to proclamation.*

Municipality and number of Precinct	Visarra Votes		Clarin Votes	
	Agreement	Proclamation	Agreement	Proclamation
TAGBILARAN—				
Precinct No. 1	72	72	44	44
" 3	71	70	47	47
" 7	93	93	41	41
" 8	48	48	31	31
" 9	69	69	29	29
" 11	135	135	1	1
" 12	76	76	4	4
" 15	155	155	25	25
CALAPE—				
Precinct No. 5	29	29	0	0
" 6	12	12	1	1
" 8	25	25	7	7
" 9	53	54	11	11
" 11	35	35	1	1
" 13	22	23	2	2
" 15	13	14	6	6
CORTES—				
Precinct No. 2	11	11	12	12
" 7	49	49	44	44
BACLAYON—				
Precinct No. 1	43	43	10	10
" 3	6	6	3	3
" 5	24	24	2	2
CORELLA—				
Precinct No. 2	120	120	12	12
" 6	28	28	24	24
MARIBOJOC—				
Precinct No. 2	19	19	0	0
3	62	62	12	12
" 5	32	32	4	4
" 7	62	62	15	15
" 11	72	72	0	0
" 12	98	98	0	0
ANTEQUERA—				
Precinct No. 1	13	13	18	18
2	68	68	10	10
TOTAL	1,612	1,614	416	416

In the following municipalities and precincts, the parties or either of them claimed contested ballots, and we now proceed to consider the same, as follows:

Tagbilaran Precinct No. 2

C–1, C–2. Objected to as stray vote. Protestee's name appears written on the line for vice president in both ballots. Objection sustained. Ballots rejected.

C–3. Objected to as stray vote. In this ballot the voter wrote the names of his candidates for the various positions very close together in such a way that the surname "Clarin" which is the fifth name written by the voter appears below the line for representative, the name "Cuenco" being on the line for representative. Our vote on this ballot was held

in abeyance in the same manner as the other ballots already adverted to. Protestee Visarra had no contested ballot in this precinct.

Tagbilaran Precinct No. 4

V–3. Claimed by Visarra. Objected to on the ground that the name written on the space for representative does not identify claimant. The word appears to read "Beasa" which we find insufficient to identify claimant even under the rule of *idem sonans*. Ballot rejected.

C–2. Claimed by Clarin. Objected to on the ground that the name appearing on the space for representative which reads "G. Clin" does not sufficiently identify the claimant. It is also alleged that the ballot was written by two hands. We find the objections without merit. Ballot admitted.

C–3. Objected to on the ground that the name appearing on the space for representative which is "J. Clarin" does not identify the claimant Clarin. Under the provisions of section 149, paragraph 6 of the Election Code (R. A. No. 180), this ballot is valid. Ballot admitted.

Tagbilaran Precinct No. 5

C–1. Objected to as stray vote. The name "Luis Clarin" appears written on line 1 for senator. Objection sustained. Ballot rejected.

Tagbilaran Precinct No. 6

V–3. Objected to as stray vote. The name "Visarra" was written between the lines for vice president and representative, that is, below the line for vice president and on the space above the line for representative. Upon the strength of our ruling in *Confesor vs. Lutero,* case No. 15, we overrule the objection. Ballot admitted.

V–4. Objected to as stray vote. Protestee's name appears written immediately below the line for representative while the name "Cosme Garcia" appears written on the same line. Cosme Garcia was not a candidate for representative in the district involved. Objection overruled. Ballot admitted.

Tagbilaran Precinct No. 10

V–2. Visarra withdrew his claim on this ballot. Ballot rejected.

C–1. Objected to on the ground that two (2) registered candidates for representative were voted for on the space for representative. The names "L. Clarin" and "J. Muana" appear written on the space for representative. Both were candidates for the office. Under the provisions of section 149 paragraph 11

of the Revised Election Code, objection sustained. Ballot rejected.

C–4. Objected to on the ground that on the space for representative the name written is "Juse Clarin" which is different from protestee's name. Upon the authority of *Lucero vs. Guzman,* 45 Phil., 852 and other cases decided by the Supreme Court, objection sustained. Ballot rejected.

Tagbilaran Precinct No. 13

V–2. Objected to as stray vote. It appears that the words "Representative Visarra" appears written on the third line for senator. Upon the authority of *Coscolluela vs. Gaston,* 63 Phil. 41 and other cases decided by the Supreme Court, where the name of the office precedes the name of the candidate, although misplaced, the vote is considered valid, objection overruled. Ballot admitted.

C–1. Objected to as stray vote. The face of the ballot is completely blank. The name "Lo. Clarin" appears written on the back without any designation of the office. Objection sustained. Ballot rejected.

Tagbilaran Precinct No. 14

C–4. Objected to as stray vote. The face of the ballot is completely blank. The words "Presintante Luis Clarin" appear written on the back. In Confesor *vs.* Lutero, Case No. 15 of this tribunal, the writer of this opinion insisted in his dissent upon the validity of a ballot of the same nature as this ballot, but the majority ruled otherwise. Objection sustained. Ballot rejected.

C–6. Objected to as insufficient to identify claimant Clarin. The word "Yoying" which claimant alleges to be his nickname appears written on the space for representative. Upon the authority of Coscolluela *vs.* Gaston, 63 Phil., 41 and section 149 par. 9 of the Revised Election Code, objection sustained. Ballot rejected.

C–8. Objected to on the same ground. The name "L. Lowing" appears written on the line for representative. We hold that the name "Lowing" is not a nickname but a pet name and is *idem sonans* with "Luis." Under section 149, paragraph 1 of the Election Code, objection overruled, ballot admitted.

Calape Precinct No. 1

V–4. Objected to as insufficient to identify Visarra. The name appearing on the line for representative reads "Bisarra" although awkwardly written. By the rule of *idem sonans,* objection overruled. Ballot admitted.

Calape Precinct No. 2

C–1, C–3. Objected to as stray votes. Protestee Clarin's name does not appear on the line for representative. Objection sustained. Ballots rejected.

Calape Precinct No. 3

V–3. Objected to as marked and as having been prepared by two hands. We find the objections without merit. Ballot admitted.

Calape Precinct No. 4

V–4. Our vote on this ballot was 3 to 3, resulting in a tie. We hold our ruling in abeyance.

Calape Precinct No. 7

C–1. Objected to as stray vote. The surname "Claring" appears written directly opposite the printed words "Senators-Senadores." Objection sustained. Ballot rejected.

Calape Precinct No. 10

C–1. Objected to as not referring to protestee. The name "Uyugoyo Clarin" appearing on the line for representative refers to Olegario Clarin, a candidate for senator. Objection sustained. Ballot rejected.

Calape Precinct No. 12

C–1. Red Box:

The data appearing in the election returns show that this ballot was rejected by the board of inspectors and erroneously placed in the red box. The ballot is good. Ballot admitted.

Calape Precinct No. 14

V–1. Objected to as stray vote. The name "Visarra" appears on the line for vice president. Objection sustained. Ballot rejected.

C–1. Objected to as not a vote in favor of protestee. The name appearing on the line for representative is "O. Clarin" which refers to the candidate for senator, Olegario Clarin. By the authority of *Confesor vs. Lutero,* Case No. 15, the objection is well taken. Ballot rejected.

Calape Precinct No. 16

V–1. Objected to as having been prepared by two hands. Objection sustained. Ballot rejected.

Cortes Precinct No. 1

V–3. Objected to as insufficient to identify Visarra. The word appearing on the space for representative is "Gareno." By the rule of *idem sonans,* the vote might have referred to the candidate Nazareno. Objection sustained. Ballot rejected.

Cortes Precinct No. 3

V–1. Objected to as stray vote. On lines 1, 2 and 3 for senator, the following were written thereon respectively:

President ..... Osmeña
Vice ..... Rodriguez
Rep. ..... Visarra

By the authority of *Coscolluela vs. Gaston,* 63 Phil., 41, and other cases decided by the Supreme Court, objection overruled. Ballot admitted.

C–6. On the space for representative, two names were voted for, namely: "J. Mona" and "L. Calrin." Both were registered candidates for the office. Under section 149, paragraph 11 of the Revised Election Code, objection sustained. Ballot rejected.

Cortes Precinct No. 4

V–2. Objected to as illegible. Protestant claims the writing on the ballot reads like his Christian name. We sustain the objection. Ballot rejected.

C–1. Objected to as insufficient to identify protestee. On the space for representative, only the surname "Clarin" appears. There is no other "Clarin" on the ballot. By authority of *Confesor vs. Lutero,* case No. 15, objection overruled, ballot admitted.

C–5. Objected to as stray vote. The name "Loes Claren" appears on the space for senator. Objection sustained. Ballot rejected.

V–1. Red Box:

Objected to as stray vote. This ballot, although found in the red box was really a rejected ballot erroneously placed therein. However, protestant's name appears on the space for senator although preceded by the capital "R." Objection sustained. Ballot rejected.

Cortes Precinct No. 6

V–1. Objected to as omitted by the commissioners in their Report of Revision. The name "Visarra" appears written opposite the printed word "Representante." Objection overruled. Ballot admitted.

V–2. Our vote on this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

Baclayon Precinct No. 2

V–1. Objected to as written by two hands. Objection overruled. Ballot admitted.

Baclayon Precinct No. 4

C–1. Objected to as stray vote. The name "Jose Clarin" on the line for representative does not refer to protestee. Objection sustained. Ballot rejected.

Baclayon Precinct No. 6

C–1. Objected to as stray vote. The name appearing on the space for representative is "O. Clarin." Under the authority of *Confesor vs. Lutero,* case No. 15, objection sustained. Ballot rejected.

Baclayon Precinct No. 7

C–1. Objected to as stray vote. "O. Clarin" appears voted for representative. Objection sustained. Ballot rejected.

Baclayon Precinct No. 8

C–1. Objected to as stray vote. Our vote on this ballot resulted in a deadlock. We hold our ruling in abeyance.

Baclayon Precinct No. 9

V–1 Red Box, V–2 Red Box. Protestant's claim withdrawn. Ballots rejected.

Baclayon Precinct No. 10

C–1. Objected to as stray vote. Protestee's name appears on the space for senator. Objection sustained. Ballot rejected.

Baclayon Precinct No. 11

C–1. Objected to as stray vote. The surname "Clarin" was written below the line for representative and opposite the printed word "Representante." No other Clarin appears on the ballot. By the authority of *Confesor vs. Lutero,* case No. 15, objection overruled. Ballot admitted.

C–3, C–4, C–5. Objections withdrawn. Ballots admitted.

Corella Precinct No. 1

V–1. Protestant's claim withdrawn. Ballot rejected.

V–2. Our vote on this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

C–1. Objected to as stray vote. While it is true that protestee's name appears on the third line for senators, it is preceded by the designation of the office "Representative," in the same manner as the other names written thereon. By the authority of Coscolluela *vs.* Gaston, 63 Phil., 41, and other cases decided by the Supreme Court, objection overruled. Ballot admitted.

C–4. Objected to as marked. On the spaces for senators, the following appears: "If the present administration will not change to a better one there will be a civil war." Objection sustained. Ballot rejected.

Corella Precinct No. 3

V–1. Objected to as stray vote. While it is true that the surname "Visarra" appears on line 4 for senators,

it is preceded by the word "Representative," in like manner as the other names written thereon. Under the authority of *Cascolluela vs. Gaston,* 63 Phil., 41, and other cases decided by the Supreme Court, objection overruled. Ballot admitted.

V–2. Objected to as stray vote. The names appearing on the ballot were written upside down, but the name of "Visarra" is preceded by the word "Risprisintate." By the same authority above cited in connection with the preceding ballot, objection overruled. Ballot admitted.

C–3, C–4. Objections withdrawn. Ballots admitted.

Corella Precinct No. 4

C–1. Our vote on this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

Corella Precinct No. 5

C–2, C–3, C–4. Objections withdrawn. Ballots admitted.

C–1. Red Box:

Objected to as stray vote. Although found in the red box this ballot was really a rejected ballot. The name "Luis Calarin" appears voted for senator. Objection sustained. Ballot rejected.

Maribojoc Precinct No. 1

V–1. Our vote on this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

Maribojoc Precinct No. 4

V–5. Objected to as stray vote. The name "Visarra" appears on the line for vice president. Objection sustained. Ballot rejected.

V–6. Objected to as stray vote. The name appearing on the line for representative is "Sergio Visarra" and does not identify the protestant. Objection sustained. Ballot rejected.

C–1. Objected to as stray vote. On the space for representative the name "Olegario Clarin" appears to be voted for. Objection sustained. Ballot rejected.

C–2. Objected to as stray vote. On the space for representative "O. Clarin" appears written. Under the authority of *Confesor vs. Lutero,* case No. 15, objection sustained. Ballot rejected.

Maribojoc Precinct No. 6

C–1. Objected to as stray vote. "J. Clarin" appears written on the space for representative. Under section 149, paragraph 6 of the Election Code, objection overruled. Ballot admitted.

C–2. Objected to as not a vote for protestee. On the space for representative the name "Moana" is voted for. He was a candidate for that office. There is a name "Calarin" voted for senator which evidently refers

to candidate for senator Olegario Clarin. Objection sustained. Ballot rejected.

Maribojoc Precinct No. 8

V–1. Objected to as not belonging to protestant. The name "Genaro Visarra" on the line for representative was crossed out and the name "J. V. Muana" was written over it. This is not a vote for Visarra. Objection sustained. Ballot rejected.

Maribojoc Precinct No. 9

V–3. Our vote on this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

Maribojoc Precinct No. 10

V–1. Our vote on this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

V–2. Objected to as stray vote. The name "Genaro Visarra" appears on the line for senator. Objection sustained. Ballot rejected.

V–3. Objected to as stray vote. The name "Gen. Visarra" appears on the line for senators written upside down. Objection sustained. Ballot rejected.

C–1. Objected to as not belonging to protestee. Protestee's name on line for representative was erased indicating desistance. Objection sustained. Ballot rejected.

C–2. Objected to as stray vote. The name appearing in the space for representative is "Olegario Clarin." Objection sustained. Ballot rejected.

Antequera Precinct No. 3

C–1. Objection withdrawn. Ballot admitted.

C–2. Objected to as stray vote. "O. Clarin" appears written on the space for representative. Under the authority of *Confesor vs. Lutero,* case No. 15 objection sustained. Ballot rejected.

Antequera Precinct No. 4

V–1. Objected to as stray vote. While it is true that protestant's name appears on the third line for senator, it is preceded by the word "Representative" in like manner as the other names appearing thereon. Under the authority of Coscolluela *vs.* Gaston, supra, and other cases decided by the Supreme Court, objection overruled. Ballot admitted.

C–1. Objected to as stray vote. On the space for representative, the word "Clarin" appears written. There is no other "Clarin" on the ballot. Under the authority of Confesor *vs.* Lutero, case No. 15, objection overruled. Ballot admitted.

Antequera Precinct No. 5

C–4. Our vote in this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

Antequera Precinct No. 6

V–4. Objected to as stray vote. The name "Vesara" appears on the line for vice president. "Garcia" appears on the line for representative. Objection sustained. Ballot rejected.

V–6. Objected to as stray vote. The name "Vesara" appears on the space for representative, although the name "Garcia" is written opposite the printed word "Representative." Upon the authority of Confesor *vs.* Lutero, case No. 15, objection overruled Ballot admitted.

Antequera Precinct No. 7

C–2. Objection withdrawn. Ballot admitted.

C–3. Objected to as stray vote. On the line for representative the name "Semyon Clarin" appears written. It is not the name of protestee. Objection sustained. Ballot rejected.

Antequera Precinct No. 8

V–1. Objected to as stray vote. The name appearing on the line for representative is "Jose Visara." It is not the name of protestant. Objection sustained. Ballot rejected.

Antequera Precinct No. 9

C–1. Objected to as stray vote. "O. Clarin" appears voted for on the line for representative. It refers to "Olegario Clarin" the candidate for senator. Under the authority of Confesor *vs.* Lutero, case No. 15, objection sustained. Ballot rejected.

C–2. Objected to as stray vote. The name "L. T. Clarin" appears on the line for vice president, while the name "O. Clarin" appears on the line for representative. Objection sustained. Ballot rejected.

C–3. Objected to as stray vote. Our vote on this ballot resulted in a deadlock. We hold our ruling thereon in abeyance.

SUMMARY OF COUNTER PROTEST

The following table will show the final number of valid votes which each of the parties received in the precincts involved in the counter-protest where contested ballots were claimed by them, as complementary to the table of votes appearing hereinbefore which had reference to the precincts involved in the counter-protest where no contested ballots were claimed. Side by side with this date, the number of votes credited to each of the parties by the Provincial Board of Canvassers of Bohol is also shown, and a comparison between the two sets of figures will show at a glance the improvement in position of either of the parties:

TABLE 2.—*Final votes of the parties in the counter-protested precincts with contested ballots claimed and admitted, as compared to votes credited in the official provincial canvass of the Provincial Board of Canvassers of Bohol.*

Municipality and precinct No.	VISARRA VOTES				CLARIN VOTES			
	Uncontested by agreement	Contested but counted	Total	Proclamation	Uncontested by agreement	Contested but counted	Total	Proclamation
TAGBILARAN—								
Precinct No. 2	76	0	76	76	59	0	59	59
Precinct No. 4	104	0	140	105	38	2	40	39
Precinct No. 5	84	0	84	84	27	0	27	27
Precinct No. 6	124	2	126	125	39	0	39	39
Precinct No. 10	101	0	101	102	13	0	13	13
Precinct No. 13	102	1	103	102	8	0	8	8
Precinct No. 14	70	0	70	70	113	1	114	115
CALAPE—								
Precinct No. 1	101	1	102	102	0	0	0	0
Precinct No. 2	47	0	47	47	22	0	22	22
Precinct No. 3	64	1	65	65	0	0	0	0
Precinct No. 4	32	0	32	33	14	0	14	14
Precinct No. 7	24	0	24	24	6	0	6	6
Precinct No. 10	5	0	5	5	0	0	0	1
Precinct No. 12	42	0	42	42	0	1	1	0
Precinct No. 14	36	0	36	36	7	0	7	7
Precinct No. 16	19	0	19	19	4	0	4	4
CORTES—								
Precinct No. 1	25	0	25	25	13	0	13	13
Precinct No. 3	32	1	33	32	38	0	38	39
Precinct No. 4	19	0	19	19	8	1	9	8
Precinct No. 5	25	0	25	25	3	0	3	3
Precinct No. 6	99	1	100	99	9	0	9	9
BACLAYON—								
Precinct No. 2	23	1	24	24	3	0	3	3
Precinct No. 4	20	0	20	20	2	0	2	3
Precinct No. 6	24	0	24	24	42	0	42	43
Precinct No. 7	14	0	14	14	0	0	0	0
Precinct No. 8	23	0	23	23	5	0	5	5
Precinct No. 9	47	0	47	47	5	0	5	5
Precinct No. 10	33	0	33	32	11	0	11	11
Precinct No. 11	61	0	61	61	25	4	29	29
CORELLA—								
Precinct No. 1	66	0	66	67	79	1	80	79
Precinct No. 3	82	2	84	83	47	2	49	49
Precinct No. 4	94	0	94	94	17	0	17	18
Precinct No. 5	65	0	65	65	16	3	19	20
MARIBOJOC—								
Precinct No. 1	70	0	70	71	5	0	5	5
Precinct No. 4	87	0	87	88	0	0	0	0
Precinct No. 6	41	0	41	41	4	1	5	5
Precinct No. 8	57	0	57	57	3	0	3	3
Precinct No. 9	91	0	91	92	3	0	3	3
Precinct No. 10	60	0	60	61	0	0	0	1
ANTEQUERA—								
Precinct No. 3	22	0	22	22	8	1	9	9
Precinct No. 4	44	1	45	44	2	1	3	2
Precinct No. 5	25	0	25	25	20	0	20	20
Precinct No. 6	83	1	84	85	0	0	0	0
Precinct No. 7	8	0	8	8	32	1	33	34
Precinct No. 8	21	0	21	22	7	0	7	7
Precinct No. 9	7	0	7	7	7	0	7	8
Totals	2,399	12	2,411	2,414	764	19	783	788

NOTE: According to above table, Visarra lost 3 votes in the revision, and Clarin, 5 votes, which makes Clarin the loser by 2 votes in the precincts mentioned.

It will be seen that: (1) in the counter-protested precincts where neither of the parties claimed contested ballots, the protestant suffered a reduction in his position by 2 votes (Table 1); and (2) while in the precincts involved in the same counter-protest where the parties claimed contested ballots, the protestee also suffered a reduction in his position by 2 votes (Table 2), which leaves the parties without any improvement in position by reason of the counter-protest.

In all the precincts involved in the counter-protest, Visarra has six (6) ballots and Clarin has five (5) ballots our ruling on which has been held in abeyance.

GENERAL SUMMARY OF VOTES

Upon consideration of the result of the revision in the first three (3) precincts of Dauis together with all the precincts involved in the counter-protest, we find that the protestant Genaro Visarra has improved his position by a total of 81 votes. The proclaimed plurality of Clarin over Visarra by the Provincial Board of Canvassers of Bohol being fifteen (15) votes, protestant Visarra has a plurality of 66 votes. As protestee Clarin has ten (10) ballots pending in the three precincts of Dauis as well as five (5) ballots pending in the precincts involved in the counter-protest or a total of fifteen (15) ballots, it is evident that the number of these pending ballots claimed by protestee Clarin can not materially affect the result because it is not sufficient to overcome the plurality of protestant Visarra. The six (6) pending ballots claimed by Visarra become mere surplusage.

GENERAL REMARKS

The revision of the ballots in Precincts Nos. 1, 2 and 3 of Dauis unerringly reveals the commission of serious frauds and irregularities during the election in said precincts. We cannot help but feel outraged by the extent of these frauds. Clean and honest election constitutes the very life-blood of democracy and the government can not be too overzealous in preserving its purity. Only thus may we preserve the sovereignty of the people which is consecrated in our Constitution. If allowed to go unpunished, the day may soon come when, like a cancerous growth, it will poison the entire body politic. When that day comes, bloody and fratricidal revolution may ensue and only the scalpel of radical surgical operation performed by an outraged people can afford the remedy.

Wherefore, we hereby declare the protestant Genaro Visarra as the duly elected representative of the First District of Bohol, in the election held on April 23, 1946, with right to assume the duties of his office. Consequently, the protestee Luis T. Clarin is hereby declared unseated,

and is condemned to pay to the protestant the costs and incidental expenses of this case. So ordered.

Justices *Guillermo F. Pablo* (Chairman), *Cesar Bengzon,* and *Alex. Reyes,* and Representatives *Marcial O. Rañola* and *Vicente Logarta,* concur.

MEDINA, *M.,* dissenting:

I dissent from the majority opinion because in conscience, I believe that a grave injustice is being committed against the protestee Luis T. Clarin.

Genaro Visarra, protestant, filed a protest against Luis T. Clarin, impugning the votes obtained by the latter in each and every one of the precincts of the municipality of Dauis and in three precincts of the municipality of Panglao, Province of Bohol, on the following grounds:

"(*a*) Luis T. Clarin and/or his political followers employed threat, intimidation and force carrying with them arms carbine, Thompson to coerce electors to vote in favor of Luis T. Clarin in each and every one of the ten precincts;

"(*b*) Absent electors were substituted by other who were in favor of Luis T. Clarin in casting their votes, in each and every one of the ten precincts;

"(*c*) Minors, under 21 years of age, were allowed to register and cast their votes in favor of Luis T. Clarin in each and every one of the ten precincts;

"(*d*) Voters who had written on their ballots in the space corresponding to the office of Representative the names of candidates Genaro Visarra, Ramon Nazareno, Pio Ferandos, Jose V. Muana, Bernardo Josol, Gaudencio Cloribel and Elpidio Arbitrario were forced by means of threat of bodily harm by the protestee's followers to cross out or cancel the names so written or votes intended for anyone of them, and to write the name of Luis T. Clarin over the name first written, in each and everyone of the ten precincts;

"(*e*) Voters who had written the names of Genaro Visarra, Ramon Nazareno, Pio Ferandos, Jose Muana, Bernardo Josol, Gaudencio Cloribel and Elpidio Arbitrario in the proper line or space for Representative were forcibly made to ask for other ballots, while the first ballots were intentionally soiled by the followers of Luis T. Clarin. In the second ballot, the elector was coerced to write the name of the herein protestee, Luis T. Clarin, in each and everyone of the ten precincts;

"(*f*) Several stray votes of Luis T. Clarin were counted and maliciously credited as votes in his favor in each and everyone of the ten precincts;

(*g*) Votes legally cast in favor of Genaro Visarra, the herein protestant, and those of Ramon Nazareno, Pio Ferandos, Jose V. Muana, Bernardo Josol, Gaudencio Cloribel and Elpidio Arbitrario were read as votes of Luis T. Clarin and counted in his favor in each of the ten precincts;

"MUNICIPALITY OF PANGLAO

"(*a*) In three precincts of Panglao, Precincts Nos. 2, 4, and 5, the number of votes credited in favor of the protestee was more than the actual number of votes cast in favor of Luis T. Clarin."

On his parts, the protestee, after denying the allegations of the protestant, interposed a counter-protest, impugning

the votes obtained by the protestant in the municipalities of Tagbilaran, Corella, Cortes, Maribojoc, Calape, Baclayon and Antequera, on the following grounds:

"1. Que en todos y cada uno de los precintos electorales de los municipios de Tagbilaran, Corella, Cortes, Maribojoc, Calape, Baclayon, Loon y Antequera, un gran número de balotas en las cuales el recurrido había sido votado para el cargo de, Representante, fueron leidas como balotas emitidas a favor del recurrente, adjudicando así al mismo las citadas balotas.

"2. Que en todos y cada uno de los precintos electorales anteriormente mencionados, un gran número de balotas, legalmente emitidas a favor del recurrido, fueron arbitrariamente rechazadas como balotas marcadas, y las mismas han sido colocadas en las urnas Rojas.

"3. Que en los municipios de Maribojoc, Calape, Corella, Antequera y Tagbilaran, el recurrente, para asegurar su triunfo, ha soborado y comprado los votos de unos mil electores quienes también ha regalado telas y ropas de UNRRA."

After the issues were joined, the Tribunal ordered that the ballot boxes and election paraphernalia be brought before it, and appointed a board of revisors for the purpose of opening the ballot boxes and of canvassing their contents.

The revisors opened the ballot boxes and started working on the 13 precincts impugned by the protestant. One by one, the ballots were revised and the protestant objected to various groups of ballots cast in favor of Luis T. Clarin claiming that all the said ballots were prepared by the same hand, and to several other groups on the ground that the individual ballot has been written by two or more hands.

The protestee objected to protestant's objections on the ground that the same were not covered by the allegations of the motion of protest.

The protestant, however, insisted on recording his objections and marked all the ballots of the protestee so objected to, so that this Tribunal may ultimately pass judgment on the merits of the objections and of the counter-objections.

After all the ballots of the protestee have been totally canvassed and all objections thereto recorded, came the revision of all ballots of the protestant, in 36 precincts mentioned in the counter-protest.

Following the procedure adopted with respect to the protestant's objection, the protestee likewise objected to and marked all ballots of the contestant which he considered invalid because they were written by the same hand or by two or more hands. These objections of the protestee created at once a furor on the part of the protestant who claimed that such objections are not covered by the allegations of the counter protest. Following, however, the procedure started by the protestant himself, the protestee went on and marked all the ballots objected to by him on the aforementioned two grounds, so that

this Tribunal may rule on the objections and counter objections in due time.

The protestant, showing downright intolerance, filed at once before this Tribunal an "urgent motion" dated March 19, 1947, and asked the Tribunal to summarily stop the protestee from making such objections, on the mere technicality that the counter-protest does not contain any allegation to that effect. (Notice that his was the same objection made by protestee when the protestant was marking protestee's ballots alleged to be written by the same hand or by several hands.)

Curiously enough, the Tribunal, on the same day, March 19, 1947, sustained the motion of the protestant and issued the following resolution:

"Upon consideration of the urgent motion of the protestant in case No. 7, Genaro Visarra, protestant, versus Luis T. Clarin, protestee, dated March 19, 1947, the Tribunal hereby directs the committee on revision to confine all objections to or claims against protestant's ballots to allegations contained in protestee's pleading; and, likewise, all objections to and claims against protestee's ballots should be confined to the allegations of the protestant's pleadings. In the application of this rule as regards the ballots involved in the counter-protest, the committee is enjoined to confine the objections or claims of the counter-protestant to the allegations of his counter-protest, to wit: (*a*) that ballots of the counter-protestants were read in favor of the counter-protestee. (*b*) that certain ballots of the counter-protestant were rejected as marked ballots and subsequently deposited in the red box." (Page 124, Record.)

The effect of this order was to summarily stop the objections of the protestee and to deprive him of his right to mark and identify the ballots objected to by him. But it had no effect upon the protestant, because the revision of the protested precincts was finished.

The protestee, in vain, filed a motion for reconsideration. Notwithstanding the fact that the protestant was able to mark and identify all the ballots questioned by him, and notwithstanding the fact that the protestee was merely following the procedure started by the protestant, the motion for reconsideration was denied and as a result the protestee was unable to mark and identify the ballots objected to by him on the grounds aforementioned. Only the ballots of the first precinct of Tagbilaran and those which were objected to and marked before the enforcement of the resolution of March 19, 1947 escaped the intolerance of the protestant and of this Tribunal.

Encouraged by this victory, the protestant, on May 6, 1947, filed another "urgent motion" informing the court that before said resolution of March 19, 1947 was enforced out of the 56 precincts involved in the counter protest, twenty (20) ballot boxes had been opened, wherein the protestee was able to record his objections, and prayed that the said objection be stricken out, and for that purpose prayed that a readjustment be made in the

records of the revisors. A similar "urgent motion" was filed by protestee on May 13, 1947, wherein he asked that all objections to protestee's ballots which are not covered by the allegations of the protest, be also stricken out.

On May 29, 1947, this Tribunal issued the following order:

"Upon consideration of the motion of the protestee in Case No. 7 entitled Genaro Visarra *vs.* Luis T. Clarin, dated May 13, 1947, together with the opposition thereto of the protestant, as well as the reply by the protestee, IT IS ORDERED that the said pleadings be attached to the records, and shall be considered when the case is heard on its merits. In the meantime, the parties are hereby ordered to make specifications of the alleged *unwarranted objections* made by the adverse party as regards each and every ballot questioned by either party."

It seems evident that the Tribunal, when this resolution was issued, was yet studying the technicality of whether or not objections against a ballot based on grounds not alleged in the motion of protest or counter-protest, should be considered or not. The last part of the above resolution, seems to convey the idea that, at that time, the inclination of the Tribunal was to consider all said objections as "unwarranted objections", and perhaps, for that reason, the protestee was not permitted to continue his objections; the specification of such "unwarranted objections" was evidently intended to facilitate the Tribunal to strike them out in due time.

Sometime later, however, in the case of Roque *vs.* Lim, case No. 11 of this Tribunal, the same question was presented and thoroughly discussed *in banc,* and the Tribunal, quoting from a decision of the Supreme Court of the Philippines, in the case of Yalung *vs.* Atienza, 52 Phil., 781, said:

"The institution of popular suffrage is one of public interest and not a private interest of the candidate, so that if in the revision of the ballots some illegal ballots are found which have not been specifically impugned in the motion of protest, the court may reject them *motu proprio,* since it is not essential that the contestant set forth the grounds of his contest with the same precision required of a pleading in ordinary civil cases. The trial court, then, did not err in taking into account in the revision of ballots, irregularities not set forth in the motion of protest." Yalung *vs.* Atienza, 52 Phil., 781.)

It is therefore apparent that the inclination of this Tribunal to consider the aforementioned objections of the protestant and of the protestee, respectively, as "unwarranted objections", definitely have way to a final ruling in favor of the propriety of the said objections. Consequently, the majority decision took cognizance of all the objections of the protestant in all the contested precincts, and also of the few objections of the protestee recorded prior to the issuance of the aforementioned resolution of

March 19, 1947. This Tribunal, however, did not consider and could not consider the objections of the protestee in full because, as mentioned elsewhere in this dissenting opinion, the protestee was stopped by the Tribunal on March 19, 1947, and as admitted by the protestant himself, in his motion of May 6, 1947, there were at least thirty-six (36) precincts, wherein the protestee was utterly denied the right to register his objections. We can realize the magnitude of this injustice if we consider that this is a close contest wherein the protestee was proclaimed winner by the provincial board of canvassers with only fifteen votes over the protestant; and notwithstanding that he was deprived of his right to object and to mark the invalid votes of the protestant in 36 precincts, the majority opinion concedes a plurality of sixty-six (66) votes only in favor of the protestant. It is therefore evident that the invalid votes in thirty-six (36) precincts, if properly scrutinized, certainly, might change the result.

The majority opinion contends that the protestee is estopped from objecting to protestant's ballots, in the 36 precincts on the ground that on February 7, 1948, counsel for both parties signed a "Stipulation" wherein they have indicated the ballots admitted without objection and those that were objected to, and in the said "Stipulation" no express exception or reservation was made with respect to the ballots contained in the thirty-six (36) precincts wherein protestee's voice was stopped by the order of this Tribunal of March 19, 1947.

We cannot agree with this opinion of the majority. This is a mere technicality which tries to kill a clear and positive right of the protestee and we cannot consent that technicalities should strangulate positive rights and reduce them to nothingness. In the second place, it is entirely unncessary for the appellee to make a saving clause in the said "Stipulation" in favor of the 36 precincts aforementioned, because the Tribunal reserved the right to consider and study carefully this question "when the case is heard on its merits." Now that the Tribunal has heard the case on its merits and is convinced that the objections were meritorious and proper, why will not the Tribunal correct itself and revoke its resolution of March 19, 1947? Why will not the Tribunal correct the injustice done on March 19, 1947, by allowing the protestee to continue entering his objections, a right which was improperly denied him on March 19, 1947?

The mere signing of this "Stipulation" cannot be taken as a renunciation of protestee's "urgent motion" dated May 13, 1947, because the same was then pending before this Tribunal and the promise of the Tribunal to consider the same "when the case is heard on the merits" was still unfulfilled. And a withdrawal by implication of a

substantive right should never be presumed; specially, it being the life-blood of this litigation it is inconceivable and absurd to think that the protestee intended to abandon it.

On the other hand, it is the duty of this Tribunal to rule on that "urgent motion" regardless of the said "Stipulation" and inasmuch as this Tribunal has ruled in favor of the validity and propriety of the said objections, its resolution of March 19, 1947, should be recalled, and the protestee given a chance to fight this case on the same ground and with the same weapons as the protestant. The law contemplates equal chances, equal opportunities and equal application of the laws for all litigants. This shoud be the norm of conduct of every tribunal of justice. I feel, with utmost pain that we have not lived up to this standard.

For all the foregoing considerations, we vote to revoke the resolution of March 19, 1947; the ballot boxes of the 36 precincts of the counter-protest where the protestee was deprived of his opportunity to enter his objections should be opened anew, and the protestee should be allowed to continue entering his objections against all defective ballots or ballots illegally prepared, for the consideration and proper appreciation of this Tribunal. So ordered.

Representatives *Emigdio V. Nietes* and *Pedro G. Albano,* concur.

Protestant declared elected representative.

DECISIONS OF THE COURT OF APPEALS

[No. 1066–R. June 18, 1948]

GENOVEVA CASILANG, assisted by her husband, CANDIDO GARCE, plaintiff and appellee, *vs.* INES FAJARDO ET AL., defendants. CRISTETA ARIZALA, ANGELINA, RAMONA, JESUS, REMIGIO and PABLO, all surnamed CORTESANO, defendants and appellants.

POSSESSION; PRESCRIPTION; KIND OF POSSESSION SUFFICIENT TO GIVE TITLE BY PRESCRIPTION.—The possession of a prior occupant, of a character insufficient to give title by adverse possession, cannot be united with a subsequent possession of another to protect title by adverse possession in the latter (2 C. J., 92). That Possession only which sets the statute in motion can be tacked to other possession for the purpose of completing the statutory bar to the maintenance of actions for the recovery of land (Hagerman *vs.* Moon, 68 Ark. 279, 283; 57 SW 935; 2 C. J., 93).

APPEAL from a judgment of the Court of First Instance of Laguna. Bautista Angelo, J.

The facts are stated in the opinion of the court.

Graciano C. Regala for appellants.
Feliciano San Luis for appellees.

GUTIERREZ DAVID, *J.:*

This case is before us on appeal from the decision of the Court of First Instance of Laguna.

The record discloses the following facts:

Victorio Viñeza owned originally a parcel of coconut land with an area of 3,000 square meters situated in the barrio of San Isidro, municipality of Lilio, Laguna, and more particularly described in the complaint. Victorio died leaving his widow, Ines Fajardo, and a son, begotten with her, named Leopoldo Viñeza, who inherited the land above-mentioned. Leopoldo married Genoveva Casilang with whom he begot two children, Santos and Soledad. Santos died in 1921 and Leopoldo on November 6, 1926. In 1928, Soledad also died and Genoveva Casilang acquired the aforesaid land by way of inheritance. Genoveva was in possession of the land since 1920 until 1928 when, upon request of her mother-in-law, Ines Fajardo, the former agreed that the latter should have the possession of the land so that she may enjoy the products thereof for her maintenance.

On June 13, 1929, Ines Fajardo, assisted by her second husband Vicente Violanda, sold the above-mentioned land to the espouses Casiano Uriarte and Epifania Sotosanchez for the sum of ₱310 with the right to repurchase the same within 10 years. Exhibit 2. On October 11, 1929, Uriarte

and Sotosanchez, in turn, mortgaged the land to Luciano Villanueva and Lorenza Zavalla to guarantee the payment of a loan in the sum of ₱100 Exhibit 3. On June 23, 1936, Ines Fajardo, assisted by her said husband, again sold the land in question to the spouses Quirico Cortesano and Cristeta Arizala for the sum of ₱350 with the condition that the latter would pay the mortgage indebtedness in favor of Luciano Villanueva and Lorenza Zavalla (Exhibit E).

In the year 1943, upon discovering the sale made by Ines Fajardo to Quirico Cortesano and Cristeta Arizala, Genoveva Casilang offered to redeem the land from the latter by returning the amount taken from them by Ines Fajardo, but the latter refused to allow the redemption. Hence, Genoveva Casilang commenced this action in the Court of First Instance of Laguna against Ines Fajardo, Cristeta Arizala and the children of the latter had with her deceased husband, Quirico Cortesano, seeking the annulment of the deed of sale executed by Ines Fajardo in favor of Quirico Cortesano and Cristeta Arizala.

Defendant Ines Fajardo filed an answer wherein she alleged, among other things, that she was made to believe that the document she was executing in favor of the espouses Cortesano and Arizala was a mere guaranty to secure the payment of a pre-existing debt and that she informed said espouses that she was not the owner of the land in question.

Defendants Arizala and Cortesanos contend that the truth was that Ines Fajardo made them understand that she was the true owner of the land showing them the document she had executed in favor of Icasiano Uriarte and Epifania Sotosanchez as well as the deed executed by the latter in favor of Luciano Villanueva and Lorenza Zavalla, and that on the strength of said documents and the aforesaid assurance of Ines Fajardo, they (defendants) agreed to buy the land. They further claim that plaintiff's cause of action has already prescribed for the reason that the espouses Cortesano and Arizala and their predecessors in interest had been in possession of the land in question for more than 10 years.

Holding that the document executed by Ines Fajardo in favor of the espouses Quirico Cortesano and Cristeta Arizala, on June 23, 1939 (Exhibit E), was an equitable mortgage and not an absolute deed of sale, the court below rendered judgment in favor of the plaintiff, ordering the defendants to allow Ines Fajardo or Genoveva Casilang to redeem the mortgage by paying the indebtedness that may be due in favor of said defendants and after such payment shall have been effected, to execute the corresponding deed of release, with costs. From this judgment, defendants Arizala and Cortesanos appealed.

In this appeal, appellants contend that the lower court erred in not holding that plaintiff's cause of action has

already prescribed; in not holding prescription of ownership in favor of the defendants; in construing the document Exhibit 1 as one of equitable mortgage and not a deed of sale; and in ordering defendants to deliver the parcel of land in question to plaintiffs.

On the question of prescription, appellants argue that since it is an admitted fact that Genoveva Casilang had ceded the possession of the property in question in favor of her mother-in-law, Ines Fajardo, in 1928, it is clear that said possession had been transferred by said Ines Fajardo since 1929 to Casiano Uriarte and Epifania Sotosanchez when she executed the *pacto de retro* sale in favor of the latter; that appellee's cause of action accrued since 1929 when Ines Fajardo violated the authority or right of usufruct given to her by the appellee; that the possession of the previous possessors of the land tacked to that of the appellants would comprise, all in all, a period of 15 years until the time of the filing of the complaint; and that the appellee having admitted that she was living in the same place where the property was situated, she could not disclaim knowledge of the different transactions that took place between Ines Fajardo and the espouses Uriarte and Sotosanchez, between the latter and Villanueva and Zavalla, and between Ines Fajardo and the appellants. With such arguments, appellants contend that appellee's action to recover the property in question has prescribed under Section 40 of the Code of Civil Procedure and that they acquired title by prescription thereon.

The contentions of the appellants are not well founded. The record reveals that it was only in the year 1943 when plaintiff discovered for the first time that appellants were in possesssion of the property at the occasion she went to see Ines Fajardo to ask her for the return of the land; that only in that year she learned that an agreement in the form of a mortgage or pledge had been entered into by Ines Fajardo and the appellants; and that plaintiff was living in the property in question in the year 1928 and not during the period of time when the aforementioned different transactions were made by Ines Fajardo. Plaintiff's action to recover the property accrued in the year 1943 only, when she discovered for the first time the adverse claim of the appellants based on a transaction made between them and Ines Fajardo without the consent and knowledge of the plaintiff.

The permissive possession of Ines Fajardo since 1928 as usufructuary, the possession of the espouses Casiano Uriarte and Epifania Sotosanchez as vendees *a retro* or mortgages, and the possession of Villanueva and Zavalla as mortgagees or pledgees, cannot be tacked to or united with the subsequent possession of the appellants because the possession of the aforementioned persons was not under claim of ownership or an adverse possession. "The

possession of a prior occupant, of a character insufficient to give title by adverse possession, cannot be united with a subsequent possession of another to protect title by adverse possession in the latter" (2 C.J., 92). "That possession only which sets the statute in motion can be tacked to other possession for the purpose of completing the statutory bar to the maintenance of actions for the recovery of land" (Hagerman *vs.* Moon, 68 Ark., 279, 283; 57 SW., 935; 2 C.J., 93).

The contention that the document (Exhibit 1) executed by Ines Fajardo in favor of the appellants should be construed as an absolute sale and not an equitable mortgage, has not merit. Ines Fajardo was not the owner of the property involved in said transaction and had no right to sell it. It was established that when Ines Fajardo signed that document she was made to believe that it was only a mortgage to guarantee the payment of a loan of ₱350 which she received from the appellants. Moreover, on this point the trial court correctly made the following rationale:

"* * * The only dispute refers to the real terms of the document executed by Ines Fajardo in favor of the spouses Quirico Cortesano and Cristeta Arizala, for while Ines Fajardo contends that her understanding with said spouses was that the land should only be placed as security for the payment of her indebtedness to them, the spouses claim that their agreement was that the property would be sold to them by way of absolute sale. The Court is more inclined to believe the claim of Ines Fajardo for the simple reason that she could not have disposed of the land by way of absolute sale knowing well that it belongs to her daughter-in-law Genoveva Casilang. In fact the first transaction she had executed concerning the land is only a sale with pacto de retro, redeemable within a period of ten years, and the transaction made by Icasiano Oriarte and Epifania Sotosanchez in favor of Luciano Villanueva and Lorenza Zavalla was only one of equitable mortgage executed to secure the payment of a loan of ₱100. Ines Fajardo knew well that the possession of the land was given to her by Genoveva Casilang merely to give her a means to live and she could not certainly reciprocate such help and courtesy with an ingratitude. It is true that the terms of the document signed by Ines Fajardo in favor of the spouses Quirico Cortesano and Cristeta Arizala recite an absolute sale. But her attitude can be very well understood considering her ignorance and lack of instruction, for she is illiterate and does not known even how to read and write, as can be very well seen by a mere perusal of the document wherein her thumbmark appears instead of her signature. The Court is of the opinion that said document Exhibit 1 only partakes of the nature of a mortgage and as such Ines Fajardo or Genoveva Casilang can still redeem it by paying whatsoever indebtedness may remain outstanding in favor of said spouses." (Pages 20–21, Record on Appeal.)

Finding the decision appealed from duly supported by the evidence of record and in accordance with law, we hereby affirm it, with costs against the appellants.

A. Reyes and *J. B. L. Reyes, JJ.*, concur.

Judgment affirmed.

[No. 1239-R. June 22, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MARTA ABERGONZADO, defendant and appellant

CRIMINAL LAW; ESTAFA; FAILURE TO DELIVER MONEY IN VIOLATION OF DUTY TO RETURN THE SAME; ARTICLE 315, NOS. 3 AND 4, SUBSECTION 1, PARAGRAPH (B), REVISED PENAL CODE, APPLIED.— Independently of whether or not the offended parties were moved to deliver their money by appellant's false pretenses of agency, business or imaginary transactions, there seems to be no question that the accused misappropriated the sum of ₱603 after having received said amount on commission and under an obligation involving the duty of securing for the offended parties textiles worth that much, or of returning the money in case she were unable to purchase sufficient stock of said materials. These acts, committed by the accused come squarely within the purview of article 315, Nos. 3 and 4, subsection 1, paragraph (*b*), of the Revised Penal Code.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Juan L. Bagano for appellant.

Assistant Solicitor-General Alvendia and *Solicitor Feria* for appellee.

FELIX, *J.:*

In connection with a shady transaction of goods which were to be pilfered from a U.S. Army Depot, defendant Marta Abergonzado received on October 25, 1945, in the City of Cebú and province of the same name, from Pomposa Gabrillo the sum of ₱603, out of which ₱100 belonged to Pomposa, ₱400 to her sister-in-law Maximina T. de Gabrillo, and ₱103 to her cousin Abundia Borromeo, with the obligation of securing or buying cotton textiles from a colored American soldier, and of delivering them immediately to her as soon as acquired, or of returning the money if the transaction was not carried to a successful end. It so happened, however, that no textile was purchased with that money, nor the latter returned to the persons that furnished the same; hence, the filing of the information that gave rise to this case. After hearing the Court of First Instance of Cebú found defendant Abergonzado guilty of estafa under article 318 of the Revised Penal Code, and accordingly sentenced her to the penalty of two (2) months and one (1) day of *arresto mayor,* to pay a fine of ₱603, to indemnify the offended party in the same amount, with subsidiary imprisonment in case of insolvency which shall not exceed one-third of the principal penalty, and to pay the costs. Against this decision the defendant appealed, and in this instance her counsel maintains that the lower court erred: (1) in not dismissing this case, for the evidence presented by the prosecution does not prove the crime charged; (2) in giving

credence to Exhibit A, a letter supposed to have been written by the accused; and (3) in declaring the accused guilty beyond reasonable doubt.

The version of the prosecution, as gathered from the evidence on record, is to the effect that on October 25, 1945, appellant went to the house of Pomposa Gabrillo, situated in Basac, San Nicolas, in the City of Cebú, and informed Pomposa that she knew of a certain American soldier who had some textiles for sale, but since she did not have sufficient capital, she proposed Pomposa to contribute a certain amount for the purpose of buying said textiles, the condition being that if appellant should fail to purchase the goods, she would return the entire amount contributed by Pomposa, but if the sale was consummated, she would deliver to the latter the textiles in proportion to her contribution. As Pomposa Gabrillo did not have the necessary capital on hand, she asked ₱400 from her brother's wife Maximina T. de Gabrillo and ₱103 from her cousin Abundia Borromeo, which, in addition to ₱100 of her own, she delivered to the herein appellant. The latter, however, failed to comply with the terms and conditions of said agreement notwithstanding repeated demands made by Pomposa and Abundia, to the damage and prejudice of the persons that supplied the money, who were unable to get it back from appellant.

The defense, on the other hand, asserts that Marta Abergonzado, who was a laundress of an American negro soldier by the name of Jessie Heron, of the Quartermaster Trucking Company stationed at Mabolo, Cebú City, met Pomposa Gabrillo, then engaged in barter business, who requested appellant to inquire from her negro friends if they had some textiles for sale; that on October 25, 1945, appellant, true to her promise and with good intentions, went to the house of Pomposa and notified her that an American negro by the name of Lawrence Homes, of the same Company, had textiles for sale; that upon knowing the kind of the goods and the price of ₱800 that the negro asked for them, Pomposa Gabrillo and Abundia Borromeo induced appellant to contribute with the sum of ₱200, as the remaining ₱600 were to be ministered by Pomposa, her sister-in-law Maximina, and Abundia her cousin; that the accused agreed to contribute with said amount on condition that her parents, who preferred to let her act as laundress rather than to enter in the business of contraband goods, be not informed of this transaction; that on October 27, 1945, Pomposa, Abundia and appellant went to the camp to deliver the money, because the negro would not give the textiles without first receiving the price; that while in the camp Pomposa delivered the ₱600 to Marta who took also her ₱200 and handed the total of ₱800 to the negro in the presence of Pomposa, Abundia

and another woman by the name of Honoria Navarro; that the negro counted the money and promised to deliver the textiles that night, at eight o'clock in the evening, to the house of Marta Abergonzado, as previously agreed upon between Pomposa and Abundia to avoid that the goods would pass in front of an MP post located in the way between the camp and the house of Pomposa or Abundia in Basac; that at eight o'clock in the evening of that day Pomposa and Abundia went to the house of appellant, but no delivery was made by the negro; that on the following day, October 28, Pomposa, Abundia and appellant went again to the camp to inquire why the textiles had not been delivered, and the negro told them that there were several MPs guarding their camp; that they were further advised by the negro not to come to the camp within three days, for fear of being suspected by their chief, and that delivery of said textiles would be made on the night of the fourth day; that when said day arrived Pomposa with a male companion went again to the house of appellant to wait for the negro, but the latter failed once more to appear, so they agreed to get the textiles themselves; that on the following day appellant, Pomposa and Abundia again went to the camp to find out why delivery was not made and there they learned that the negro whom they paid for the textiles, had moved out in the afternoon of the previous day; that since then nothing unusual occurred, though appellant and Pomposa often met at the camp; that Pomposa continued in her barter business, and appellant went on with her laundry work until December 8 when Jessie Heron moved out; that it was not until almost two months from the date of the delivery of the money for said transaction—or on December 28, 1945, when all the negroes who knew something of the transaction had already moved out—that this case was cunningly instituted for the purpose of curtailing the evidence of the defense and thus compel appellant's parents to reimburse the amount of ₱600 to the complainants in order to avoid trial.

As can be seen from the preceding narration of the respective versions of the parties, the solution to this case depends on the credibility of the witnesses presented, and it is already settled in this jurisdiction that the trial judge that saw and heard the witnesses testify and had opportunity to observe their demeanor and manner of testifying, is in a most prominent position to gauge their credibility, and his findings of fact must not be disturbed unless the records shall show that some fact or circumstance of weight or influence has been overlooked, or the significance of which has been misinterpreted by the lower court, or some conclusion established from the facts is inconsistent with those findings, or there is some inherent weakness

in the evidence upon which the trial judge based his conclusions. (Baltazar *vs.* Alberto, 33 Phil., 336.)

"The trial court, having before it the witnesses and hearing them testify, is in a better position in many ways, to judge the weight which should be given to opposing testimony than are We who see merely the typewritten questions and answers; and where is nothing in the record to demonstrate that the court failed to take into consideration some material fact or circumstances or to weight accurately all of the material facts and circumstances or to perform some duty to the accused laid upon it by the law, this court will not interfere with the judgment of the trial court touching the weight which ought to be given to the testimony of opposing witnesses." (U.S. *vs.* Melad, 27 Phil., 488; U.S. *vs* Claro, 32 Phil., 413).

The trial judge, after weighing the evidence appearing on record, gave more credence to the theory of the prosecution, and he was right in so doing, if We consider, among other reasons, that:

(1) Pomposa Gabrillo invested in the transaction the sum of ₱100, the *only* amount that she had available, and had to seek the aid of a sister-in-law and a cousin to make up the amount necessary for the deal. In such situation it is not to be expected in the ordinary course of business, that Pomposa would induce appellant Marta Abergonzado to look for textiles to buy when she had but a very small sum of the total needed to invest in the purchase. The version of the prosecution that it was the appellant who approached Pomposa to induce her to furnish the capital necessary for an alleged underhand purchase of textiles to be taken from a U.S. Army Depot, is more natural and more likely to have happened. Anyway, it is immaterial which of the parties approached the other first, if at the end there was an unlawful misappropriation of money received on commission.

(2) On record appears Exhibit A, dated December 5, 1945, wherein appellant Marta Abergonzado states to Abundia Borromeo not to worry because

"Tomorrow morning I will go to your school and will bring to you the ₱103 which corresponds to you, the ₱100 which corresponds to Inday Poping (Pomposa), and the ₱400 which corresponds to Mana Maxi. This money is not in my possession—my mother has it. Indeed, it comes true that Homes and Heron are going to bring to us the 3 dozens brillantine and 1 bundle pique printed, 3 "piezas" Indian Head, 3 "piezas" silk bed sheet and T-shirt.

I will return to you double the money if this day lapses. Indeed, Nang Abun, tonight we will succeed at last. Homes and Heron will be coming here.

The certifier,

MARTA ABERGONZADO"

This note is in line with the testimony of Pomposa to the effect that on October 25, 1945, appellant took the sum of ₱603 promising to deliver the textiles that very night, which she failed to do then and when a week thereafter Pomposa met the appellant, the latter evasively said that the money was with her mother. On the other hand,

appellant informed Pomposa that a colored American named Bloussard was the person from whom the purchase of textiles was to be made, but in one of the occassions in which Pomposa went to the camp and talked to said Bloussard, the latter denied having any understanding about textiles with appellant. For some time Pomposa could not get in touch with Marta Abergonzado, and becoming impatient brought this criminal action against her after her cousin Abundia obtained the above quoted Exhibit A from appellant and which the latter would have not signed if the facts of the case were as related by the defense. It is true that Marta Abergonzado denies having signed Exhibit A, but a comparison of her signature in that exhibit with the acknowledged genuine signatures of Marta Abergonzado appearing on Exhibits B, B-1, and B-2, shows that all said signatures present the same general characteristics and seem to have been written by the same hand.

(3) The delivery of the money (₱603) to appellant was made on October 25, 1945, and appellant must have absented herself and avoided the offended parties when the latter could not make the former sign Exhibit A at a much earlier date than December 5, 1945. Although appellant claims that after said frustrated transaction she went on with her laundry work until December 8, 1945, when Jessie Heron moved out, she contradicted herself by admitting to have left her house because her uncle residing in Bohol called her to help in the harvesting of palay.

As to the nature of the crime prosecuted in this case, defense counsel contends that the evidence on record has not established the commission by appellant of the crime of *estafa,* but of theft, because in his opinion only the *material* possession of the money (₱603) was transferred to her and not the *juridical possession* necessary to make its misappropriation a case of *estafa* (People *vs.* Alegada, 47 Phil., 353; People *vs.* Trinidad, 50 Phil., 65). In the decision appealed from the court found the defendant guilty of estafa included in the general term of "other deceits" (art. 318, RPC). The Solicitor General, in his turn, maintains that the crime proved in the case at bar is defined and penalized by article 315, subsection 2, paragraph (*a*) and not by article 318 of the Revised Penal Code, since appellant's fraudulent representations that she had a seller of textiles was the cause or motive which induced the complainants to part with the money (See People *vs.* Acuña, G.R. No. 39136; People *vs.* Almario, CA-G.R. No. 44566, July 31, 1947). Independently of whether or not the offended parties were moved to deliver their money by appellant's false pretenses of agency, business or imaginary transactions, there seems to be no question that Marta Abergonzado *misappropriated the sum of*

₱603 after having received said amount on commission and under an obligation involving the duty of securing for the offended parties textiles worth that much, or *of returning the money in case she were unable to purchase sufficient stock of said materials.* These acts, committed by appellant come squarely within the purview of the hereunder quoted pertinent portions of Article 315 of the Revised Penal Code, to wit:

"ART. 315. *Swindling (estafa).*—Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

"* * * * * * *"

34. The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos.

"* * * * * * *"

4th. * * * provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

"* * * * * * *"

(*b*) *By misappropriating or converting, to the prejudice of another, money,* goods, or any other personal property *received by the offender* in trust or *on commission,* or for administration, *or under any other obligation involving the duty to make delivery of or to return the same,* even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

"* * * * * * *"

Of course the court feels no sympathy for the offended parties, whose lust of money bent them to profit by abetting colored American soldiers in pilfering U.S. Army goods—which constitutes a crime by itself—but their evil design is no ground for exonerating appellant from the criminal and civil liabilities that she has incurred by the commission of the crime she stands charged in this case. A sense of morality suggests that the offended parties be made to lose the amounts they invested in the transaction, which should be declared forfeited to the government, but despite Our search We find no legal support to provide for such confiscation.

Wherefore, appellant Marta Abergonzado is found guilty of *estafa,* and in accordance with the provisions of article 315 Nos. 3 and 4, subsection 1, paragraph (*b*), of the Revised Penal Code, and of the Indeterminate Sentence Act (No. 4225), she is sentenced to suffer the penalty of from two months and one day of *arresto mayor,* to one year and one day of *prisión correccional,* to indemnify the offended parties in the sum of ₱603, or to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. With this modification, the decision appealed from is hereby affirmed. It is so ordered.

Torres and *Endencia, JJ.,* concur.

Judgment modified.

[No. 1476-R. June 24, 1948]

CIRILO MAPA ET AL., plaintiffs and appellees, *vs.* ENRIQUE GARCIA, defendant and appellant

LEASE, TERMINATION OF; IMPLIED RENEWAL; HOUSE RENTAL LAW, APPLICABILITY OF.—The lessee contends that he cannot be ousted from the house before the expiration of one year from the termination of the original contract, in accordance with section 1 of Commonwealth Act No 689, as amended by Republic Act No. 66, which has prolonged the implied renewal (tácita reconducción) established by article 1566 of the Civil Code, and that, consequently, the complaint filed in this case was premature. *Held:* This contention, subject to a qualification, is correct according to the decision of the Supreme Court in the case of Kalaw et al., *vs.* Pictain, G.R. No. L-597, decided August 29, 1947, in which it was held that Commonwealth Act No. 689 and Republic Act No. 66 have retroactive effect on contracts of lease entered into prior to their enactment, affecting the period of the lease in case the contract does not specify any term. However, it was also held in said decision that if the plaintiff needs the house for himself and his family, he has the right to oust the lessee before the expiration of the period fixed by section 1 of Commonwealth Act No. 689, as amended by Republic Act No. 66. This ruling is based on section 2 of Republic Act 66 amending Commonwealth Act 689. The lessee in said case was ordered to vacate, although the period specified in section 1 of Commonwealth Act 689, as amended by Republic Act No. 66 had not expired, because the lessor needed the house.

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

J. S. Sarte and *M. G. Mendiola* for appellant.
Jose D. Cortes for appellees.

JUGO, *J.:*

This is an ejectment case. The defendant appealed from the decision of the Court of First Instance of Manila which ordered him to vacate the premises in question and to pay to the plaintiffs a monthly rental of ₱40 from August 16, 1946, until the premises are vacated, with costs.

The plaintiffs purchased the house No. 1196 Kusang Loob Street, Sta. Cruz, Manila, on August 16, 1946 because they needed a place where to live in as they were paying ₱300 monthly for the house where they were living at 1823 Felix Huertas. The defendant had been occupying the house on Kusang Loob for about eight years and had been paying a monthly rental to the former owner. The plaintiffs made oral demands on the defendant to vacate the premises on the ground that they needed them for themselves and their children. Finally, on August 21, 1946, written notice was served on the defendant to vacate the house. As these demands were unheeded, the plaintiffs filed a complaint in the municipal court of Manila, pray-

ing that the defendant be ordered to vacate the house and to pay the sum of ₱300 monthly as damages, this being the sum that the plaintiffs were paying for the house in which they were living, ₱500 as further damages, and costs.

The defendant answered with a general denial, with affirmative and special defenses and a counter-claim for ₱100 for alleged repairs and ₱500 as attorney's fees and damages for attending to the hearing of this case. In his affirmative and special defenses, the defendant alleges that he has been occupying the house for eight years and that he was up to date in the payment of the rents. In addition to these allegations of fact, he raises in his answer questions of law which will be presently discussed.

There is no question that the house was purchased by plaintiffs from Pacifico Garcia on August 16, 1946, Exhibit A; that the defendant had been occupying the house for eight years as lessee, paying a monthly rent to the former owner Pacifico Garcia; and that he was not in arrears in the payment of the rent. The principal questions at issue are whether the plaintiffs have the right to oust the defendant, and how much he should pay the plaintiffs as rent for the house during the time that he has been occupying the same since it was purchased by the plaintiffs.

The defendant contends that he cannot be ousted from the house before the expiration of one year from the termination of the original contract, in accordance with section 1 of Commonwealth Act No. 689, as amended by Republic Act No. 66, which has prolonged the implied renewal (*tácita reconducción*) established by article 1566 of the Civil Code, and that, consequently, the complaint filed in this case was premature. This contention, subject to a qualification which will be discussed later, is correct according to the decision of the Supreme Court in the case of Kalaw et al., *vs.* Pictain, G.R. No. L–597, decided August 29, 1947, in which it was held that Commonwealth Act No. 689 and Republic Act No. 66 have retroactive effect on contracts of lease entered into prior to their enactment, affecting the period of the lease in case the contract does not specify any term. This doctrine has been reaffirmed in other decisions of the same Court. However, it was also held in said decision, Kalaw *vs.* Pictain, that if the plaintiff needs the house for himself and his family, he has the right to oust the defendant before the expiration of the period fixed by section 1 of Commonwealth Act No. 689, as amended by Republic Act No. 66. This ruling is based on section 2 of Republic Act No. 66 amending Commonwealth Act No. 689, which reads as follows:

"In a suit for ejection or for the collection of rents due and payable by virtue of a contract of lease of buildings destined solely for

dwelling, not being a room or rooms of an hotel, and lots, the fact that the rents are unjust and unreasonable shall constitute a valid defense. Except as provided in section twelve of this Act, no lessee or *occupant shall be ejected in cases other than for willful and deliberate nonpayment of rents or when the lessor has to occupy the building leased.*" (Italics ours)

In said decision the Court said:

"* * * Son esta disposión legal ningún arrendatario, después de la aprobación de la ley, será desahuciado a menos que (*a*) voluntaria y deliberadamente deje de pagar la renta; o (*b*) que el arrendador tenga necesidad de ocupar la finca; o (*c*) que el arrendatario la subarriende sin el consentimiento escrito del arrendador (art. 11)."

The lessee in said case was ordered to vacate, although the period specified in section 1 of Commonwealth Act No. 689, as amended by Republic Act No. 66 had not expired, because the lessor needed the house.

The question of fact is whether the plaintiffs herein need the premises for themselves and family. The plaintiff Tranquilina de Mapa testified that all their houses were burned during the battle for the liberation of Manila and they had to occupy the house No. 1823 Felix Huertas, paying a monthly rent of ₱300; that they had received several notices, oral and written, to vacate said house, as the owner needed it for himself; and that they had been given time up to October 31, 1946, to vacate it, which had been extended to December 31, 1946 and lastly to January 31, 1947 (Exhibit D).

The defendant tried to counteract the evidence of the plaintiffs with the testimony of Hermogenes Datuin, who stated that one Mr. Pabalan said that he was an agent of the owner of the house at Kusang Loob and offered to sell it to him, Datuin, but the transaction fell through. This testimony is purely hearsay; Pabalan was not presented in court to confirm what Datuin testified. The plaintiff Tranquilina de Mapa denied this testimony of Datuin.

The defendant points out that the Chinaman who was occupying part of the house on Kusang Loob, in compliance with a court order, has left the house, and that the portion left by him is now occupied by certain persons other than the plaintiffs. This shows, according to defendant, that the plaintiffs do not need the house, otherwise they could have occupied that part themselves. The plaintiff Tranquilina de Mapa testified that the persons living in the portion of the house left by the Chinese are her female cook with some companions, who are not lessees, and that they, the plaintiffs, had not moved to that portion because it is too small for their family, as they need the whole building. These reasons given by the plaintiffs appear to be valid. The preponderance of evidence, therefore, shows that the plaintiffs need the house, and under the

above-quoted provisions of Commonwealth Act No. 689 as amended by Republic Act No. 66, they have the right to oust the defendant.

The defendant claims that the amount demanded by the plaintiffs is excessive. It should be noted that the plaintiffs do not ask for rent properly speaking, but for damages of ₱300 a month which is the same amount that they pay for the house that they occupy on Felix Huertas. Of course, this prayer of the complaint is untenable for the reason that in an ejectment case no damages can be asked for, but only the reasonable value of the use and occupation of the premises. But this misconception of law by plaintiffs does not bar them from the right to occupy the house. The plaintiffs did not ask for a specific amount of rent, for the reason that they wanted the house for themselves to live in. The lower court deemed that the sum of ₱40 is a reasonable monthly rent. This is lower than the rate of 20 per cent of the assessed value authorized by section 3 of Commonwealth Act 689, as amended by Republic Act No. 66, and may be allowed to stand up to June 21, 1947, when Presidential Executive Order No. 62 was issued, fixing a lower rate, 12 per cent. The basis is the assessment at ₱6,000 (Exhibit E) for the house and ₱1,130 for the lot, reduced to two-fifths which is the portion occupied by the defendant.

The defendant assails the assessment (Exhibit E) on the ground that it was not final and insists that the former assessment of ₱1,700 should be followed. The last assessment was made by the City Assessor and there is nothing to show that the plaintiffs have any reason to object to it and that they presented it in bad faith.

It is unnecessary to say that the rates fixed by those legal provisions are applicable to the present case, as they should be given the same retroactive effect as the provisions regarding the period of the lease (Syta *vs.* Peña, CA-G.R. No. 277–R).

The defendant makes a counterclaim of ₱100 for alleged repairs. The attorney for the plaintiffs admitted that the repairs were made. The defendant stated that "they are repairs and improvements made on the house." (Pages 58–59, t.s.n.) There is no evidence as to the nature of such repairs and improvements. It is believed, therefore, that they should be governed by article 1573 of the Civil Code which provides "a lessee shall have, with respect to useful voluntary improvements, the same rights which are granted to usufructuaries." These rights are prescribed by article 487 of the Civil Code.

Referring to the counterclaim of the defendant for ₱500 "in concept of actual earnings lost by him for attendance in the hearings of this case," it is untenable.

In view of the foregoing, judgment is hereby rendered ordering the defendant to vacate the house described in

the complaint and to pay the plaintiffs the sum of ₱40 as monthly rental from August 16, 1946 to June 20, 1947; and the sum of ₱28.52 as monthly rental from June 21, 1947 until he vacates the premises.

The counterclaim of the defendant for the sum of ₱100 and ₱500 is denied. The defendant, however, may remove the improvements above-mentioned should it be possible to do so without injury to the property. With costs against the appellant. It is so ordered.

De la Rosa and *Paredes, JJ.*, concur.

Judgment modified.

[No. 1627–R. July 1, 1948]

Testate estate of the late Bernabe Rodriguez. MARTINA ARANIEGO, petitioner and appellee, *vs.* ANTONIO RODRIGUEZ ET AL., oppositors and appellants.

1. WILLS; PROBATE OF; CONJOINT WILL, PROHIBITED; WILLS IN SEPARATE INSTRUMENTS, NOT CONJOINT.—Although the two testators, who are husband and wife, instituted the other as the universal heir in their respective wills, said wills are not void because they are not conjoint but are made in different instruments. What the law (article 669, Civil Code) prohibits is when two or more persons make a will conjointly or *mancomunadamente* or in the same instrument. (Comentarios al Código Civil by Mucius Scaevola, Vol. 12, pp. 187–188; 5 Manresa, pp. 394-395, 5th Ed.)

2. ID.; MENTAL CAPACITY OF TESTATOR; DISEASE OR PHYSICAL WEAKNESS, ITS EFFECT.—Disease or physical weakness alone does not affect the mental capacity of a testator, unless it is of such a nature as to render him incapable of knowing what he is doing. As has been held in the case of Torres et al *vs.* Lopez (48 Phil., 772), "neither old age, physical infirmities, feebleness of mind, weakness of the memory, the appointment of a guardian, nor eccentricities are sufficient singly or jointly to show testamentary incapacity * * *".

APPEAL from a judgment of the Court of First Instance of Bulacan. Ysip, J.

The facts are stated in the opinion of the court.

Bustos & Bustos for appellants.
Abejo, Bustos & Balatbat for appellee.

JUGO, *J.:*

Martina Araniego filed on July 19, 1946, a petition in the Court of First Instance of Bulacan for the probate of the will of Bernabe Rodriguez who died on July 14, 1946, at Meycawayan, Bulacan. Antonio, Trinidad and Dolores, all surnamed Rodriguez, brother and nieces, respectively, of the deceased and the heirs of Francisco Javier Rodriguez, another brother of the deceased, filed an opposition to said petition, alleging that the will was not executed and witnessed in accordance with law; that the testator had no

mental capacity to execute the will; that it was obtained by means of undue pressure and influence; and that the said will was not the will of the testator. After trial the court issued an order admitting to probate as the last will and testament of the deceased Bernabe Rodriguez the document marked as Exhibit C (C–1, translation into English), and appointing Martina Araniego administratrix upon the filing of a bond in the sum of ₱2,000. From said order the oppositors appealed.

In the reply-memorandum of the oppositors-appellants dated February 22, 1948, the appellants alleged as an additional ground of opposition that the will of the deceased Bernabe Rodriguez is void for the reason that in said will, Exhibit C, the deceased instituted his wife, the petitioner Martina Araniego, his universal heir and the latter, on the other hand, in her will, Exhibit D, declared Bernabe Rodriguez her universal heir; that is, they were reciprocal beneficiaries in the two wills, citing article 669 of the Civil Code which says:

"Two or more persons cannot make a will conjointly or in the same instrument, either for their reciprocal benefit or for the benefit of a third person."

The Spanish text of said article is as follows:

"ART. 669. No podrán testar dos o más personas mancomunadamente, o en un mismo instrumento, ya lo hagan en provecho recíproco, ya en beneficio de un tercero."

It will be noted that the law prohibits two or more persons to make a will conjointly or *mancomunadamente* or in the same instrument. The wills in this case are not conjoint but are different instruments; consequently, the above provisions do not apply to them. This is clearly explained by Q. Mucius Scaevola in his *Código Civil*, Vol. 12, pp. 187–188, and by Manresa in Vol. 5, pp. 394–395, 5th edition. No further remark is necessary on our part.

On July 27, 1942, Bernabe Rodriguez executed the document Exhibit C in Tagalog (Exhibit C–1, translation into English), a language which he knew, as his last will and testament, composed of only one page, which was read before the testator and the witnesses by Atty. Teofilo Abejo, upon the request of the testator and Martina Araniego, and signed by the witnesses in the presence of the testator and of each other. The name of the testator was written in his presence and in that of the other witnesses by the witness Teodulo Iñiguez by the express direction of the testator, for the reason that the latter was blind and could not sign himself.

The appellants contend that Teodulo Iñiguez wrote the name of the testator without being requested to do so by the latter. Testifying on this point, Teodulo Iñiguez said:

"P. También aparece en el documento Exhíbit C que la firma que se lee Bernabé Rodríguez está seguida con otra firma de Teodulo

Iñiguez. Puede usted decir las circunstancias bajo las cuales se estampó esta firma de Bernabé Rodríguez? "R. Yo estampé la firma que se lee Bernabé Rodríguez, a petición del difunto.

"P. Sabía usted la razón por que el difunto le pidió a usted que usted estampara su firma en ese documento?—"R. Porque el difunto no padía ver, estaba ciego." (Pp. 7–8, T. S. N. Trial of Sept. 27, 1946.)

In the cross-examination of Iñiguez he said that he did not remember the conversation that took place or the words that were uttered during the signing of the will. It is not strange considering that the will was executed on July 27, 1942 and the witness testified on October 18, 1946, or more than four years later. It does not contradict his testimony to the effect that he was requested by the testator to sign the latter's name. A man may remember the substance of what he is told but not the words used.

In the cross-examination of Rosendo Daez, he stated that there was no conversation during the occasion of the signing of the document, Exhibit C. The word "conversation" means an exchange of words or remarks between two or more persons. There was no necessity for any conversation just for the signing of a will. To direct a person to do something is not conversation. Webster's Dictionary gives the pertinent meaning of "conversation" and "converse" as follows:

"*Conversation*—Coloquial discourse; oral interchange of sentiments or observations; also, an instance of this; talk; colloquy; as Samuel Johnson's conversation.

"*converse*—To engage in familiar colloquy; to interchange thoughts and opinions in speech; to talk, especially in an intelligent or sustained manner; to communicate.

The appellant's brief quotes the following testimony of Daez on cross-examination:

"Q. Please refresh your memory, from the time this document Exhibit C was read up to the time the signing was finished, *was there any conversation had between and among any of the persons present?*—A. *There was none.*

"Q. From the time that document Exh. C was read up to the time the signing thereof was finished, you mean to say there was no conversation at all among or between any of the persons present?—A. After I signed I left.

"Q. Yes, sir, but before you left and beginning from the time this Exhibit C was read, did *you remember if there was any conversation between and among the parties present?*—A. There was none. (fls. 21-23, id.)

"Q. Not a word was spoken between the parties? A. I have not heard anybody." (Page 7, appellants' brief.)

It would seem from the last answer that no word at all was spoken by anybody. This is very unlikely, because six persons cannot meet in a place without anyone uttering some words unless they were all dumb. What the witness must have meant is that he did not hear any conversation or exchange of remarks. It should be noted that the answer of the witness "I have not heard anybody" does

not come immediately after the question "Not a word spoken between the parties?", according to the original transcription of the stenographic notes. Between said question and answer there was a great deal of discussion between the attorneys, and finally the court ordered the witness to answer. Then the witness said "I have not heard anybody" which might have referred to the conversation. The original record of the transcription is as follows:

"Q. Yes, sir, but before you left and beginning from the time this Exhibit C was read, did you remember if there was any conversation between and among the parties present?

Sr. Osorio:

Nos oponemos a la pregunta por falta de base. Hasta ahora no hay prueba, ni se ha leido, si quien ha leido el testamento antes de firmar para continuar con la preguntas que después de leido el testamento cuantos minutos ha transcurrido para otorgar el testamento.

Sr. Bustos:

Sr. Juez, el testigo dice que ha comprendido el contenido del documento porque cuando se leyó yo lo entendí. De modo que hay prueba de que se leyó el documento. Ahora desde el momento que se leyó el documento hasta el momento de firmar si ha habido conversación entre las partes presentes es lo que quiero saber.

Juzgado:

Conteste.

"A. There was none.

"Q. Not a word was spoken between the parties?—

Sr. Osorio:

Nos oponemos a la pregunta—

Mr. Bustos:

I withdraw the question.

Mr. Bustos:

"Q. Are you sure of that answer of yours, Mr. Daez?

Sr. Osorio:

La misma objeción.

Juzgado:

Conteste.

"A. I have not heard anybody." (pp. 22-23, T .S. N., Trial of Oct. 18, 1946)

It is also contended by the oppositors that it was Martina Araniego who asked Iñiguez to sign the name of Bernabe Rodriguez on Exhibit C and her name on Exhibit D, her will. If Martina asked Iñiguez to sign both wills, that does not preclude the fact that the testator also requested Iñiguez to sign his will.

The appellants allege that undue pressure and influence was exerted on the testator by Martina to induce him to make the will. The evidence of the oppositors consists in that Bernabe Rodriguez and Martina Araniego attended to the purchasers in their *sari-sari* store; that the clothes of Bernabe were very dirty and his hair was uncut; that Bernabe sold the articles which were near him at the table of the store the location of which he knew by the sense of touch; that Martina did not allow him to change his clothes although they were dirty; and that Bernabe attended to

the purchasers in their store by selling the articles which were near at hand, but once when he made a mistake by selling the wrong kind of sugar, he was severely scolded by Martina and he very meekly retired to a corner, without saying anything. Does this imply undue pressure and influence? It is rather the contrary, because if Martina neglected or mistreated him, she would have had less hope of being the beneficiary. If she wanted to exert influence, she would have treated him well to obtain his good will. There may have been quarrels between the two spouses regarding small matters in the household which may have been overheard by people outside, but that does not mean that the spouses were on bad terms with each other. On the other hand, it was Martina who took care of the testator and none of the relatives seem to have taken any interest in him, so far as the record discloses. It was natural, therefore, for him to favor his wife, who was taking care of him rather than other people who did not remember him at all.

There is no specific evidence that Martina or anybody in her behalf had exerted pressure or influence of any kind on the testator to induce him to make the will.

As to the mental capacity of the testator, we have the testimony of Dr. Teodulo Iñiguez and other witnesses that the testator was sufficiently sound in mind to execute a will. Disease or physical weakness alone does not effect the mental capacity of a testator, unless it is of such a nature as to render him incapable of knowing what he is doing. This has been held in numerous decisions of the Supreme Court, one of them being that of Torres et al., *vs.* Lopez (48 Phil., 772, 773), in which it was held that:

"3. ID.; ID.; TESTS OF CAPACITY.—Neither old age, physical infirmities feebleness of mind, weakness of the memory, the appointment of a guardian, nor eccentricities are sufficient singly or jointly to show testamentary incapacity. The nature and rationality of the will is of some practical utility in determining capacity. Each case rests on its own facts and must be decided by its own facts.

"4. ID.; ID.; EVIDENCE.—On the issue of testamentary capacity, the evidence should be permitted to take a wide range in order that all facts may be brought out which will assist in determining the question. The testimony of subscribing witnesses to a will concerning the testator's mental condition is entitled to great weight where they are truthful and intelligent. The evidence of those present at the execution of the will and of the attending physician is also to be relied upon.

In view of the foregoing, the order appealed from admitting to probate the document, Exhibit C, as the last will and testament of the deceased Bernabe Rordiguez is hereby affirmed, with costs against the appellants. It is so ordered.

De la Rosa and *Paredes, JJ.*, concur.

Judgment affirmed.

[No. 860–R. Julio 9, 1948]

ALFREDO CELIS, EVA CELIS, AUGUSTO CELIS, AGUEDO CELIS Y PILAR CELIS, demandantes y apelantes, *contra* RAMÓN CRISÓSTOMO, VICTORIA CRISÓSTOMO Y VICENTE CRISÓSTOMO, menores, representados por Ramona Crisóstomo Tiongson, demandandos y apelados.

1. HIJOS NATURALES; RECONOCIMIENTO, DOS ORIGINES DE; POSESIÓN NO INTERRUMPIDA DE ESTADO DE HIJO NATURAL, EFECTO; CASO DE AUTOS.—El reconocimiento puede ser: Voluntario o compulsorio, o como dice el autor Sr. Manresa: "* * *; de donde resulta que el reconocimiento tiene dos orígines: 1.°, la voluntad de los padres, libremente manifestada y cumplida; 2.°, la sentencia firme que obliga a ello, en los casos en que el hijo puede exigirlo." (1, pp. 614 & 615) Los demandantes Alfredo, Eva, Augusto y Pilar no han tratado de demostrar, ni pretenden que sus presuntos padres naturales (Arturo Celis y Rosario Herardo Cruz) en vida les han reconocido, voluntariamente, como hijos naturales, ni que hayan sido obligados a ello por sentencia firme, de conformidad con lo que se despone en los Artículos 131, 135 y 136 del Código Civil. Solamente invocan la aplicación de los referidos articulos 135 y 136 en los que se reconoce "* * * la posesión continua del estado de hijo natural * * *", como motivo legal para compelar al padre o a la madre a reconocer a un hijo natural. Es de notar, sin embargo, que en su demanda no solicitan su reconocimiente compulsorio, porque alegan que son híjos naturales ya reconocidos de Arturo Celis y Rosario Herardo Cruz, afirmación esta que negaron los demandados. No se ha planteado, por lo tanto, en el Juzgado de origin una acción de reconocimiento, por medio de los escritos de demanda y contestación, lo que se hubiera podido hacer conjuntamente con la acción principal, siguiendo la doctrina sentada por el Tribunal Supremo en Briz *vs.* Briz (43 Phil., 763) y Suarez *vs.* Suarez (43 Phil., 903). Por esta razón, el Juzgado *a quo*, al apreciar las pruebas aportadas, hallo que Alfredo, Eva, Augusto y Pilar Celis no han podido establecer que "* * * fuesen, cuando menos hijos naturales de las personas ya mencionadas (Arturo Celis y Rosario Herardo Cruz), y mucho menos han acreditado que Arturo Celis los hubiese reconocido como tales."

2. ID., ID., ID.—La no interrumpida posesión del estado de hijo natural, como ya se ha dicho, es solo motivo legal para compeler el reconocimiento. No es el hecho del reconocimiento mismo que califica de heredero al reconocido. (Veáse Suarez *vs.* Suarez, *supra.*)

3. ID.; ID.; PRESCRIPCIÓN DE LA ACCIÓN.—Rosario Herardo Cruz y Arturo Celis fallecieron, aquélla, en 12 de enero y, éste, en 4 de mayo de 1945. Teniendo a Pilar por la más joven de entre los hermanos, ella debía tener en 4 de mayo de 1945 la edad de 34 años, o había alcanzado la mayoría de edad 13 años antes del fallecimiento de Arturo Celis; y si se computa la edad de Augusto, resultará que, cuando el inició cata causa en 19 de junio de 1945, ya era mayor de edad 21 años atrás. Se tiene, por lo tanto, que la aseveración hecha por Alfredo, Eva, Augusto y Pilar Celis en su demanda de que son hijos naturales reconocidos de los difuntos Arturo Celis y Rosario Herardo Cruz no solamente no ha sido substanciada sino que al parecer han tratado de cambiarla por la pretensión de que han gozado de una manera interrumpida del estado de hijo natural de los mismos Arturo Celis y Rosario Herardo Cruz, cambio este que

no se ha hecho en los escritos de alegaciones, y que, al plantearse ahora en apelación, se encuentra con la objeción de los apelados de que en tal caso la acción de los demandantes está prescrita, la cual tiene su precedente en Suarez *vs.* Suarez, *supra*, que redujo a dos años el plazo para ejercitar la acción de reconocimiento, computado desde la fecha en que se alcanza la mayoria de edad.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Gutiérrez David, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Tansinsin & Yatco en representación de los apelantes.

Srta. Anatolia Reyes en representación de los apelados.

DE LA ROSA, *M.:*

Alfredo, Eva, Augusto, Aguedo y Pilar, todos de apellido Celis, alegando que son hijos naturales reconocidos de los hoy difuntos Arturo Celis y Robledo y Rosario Herardo Cruz para acreditar su personalidad, solicitan que se declare nula y sin valor la siguiente:

"ANNEX A

"DEED OF DONATION

"KNOW ALL MEN BY THESE PRESENTS:

"That this instrument made and entered into by and between Arturo Celis y Robledo, Filipino, of legal age, single and a resident of Pasay, Manila, hereinafter known as the Donor; and the spouses Vicente D. Crisostomo and Luz Celis de Crisostomo, Filipinos, of legal age, and residents of Pasay, Manila, hereinafter known as the Donees.

"WITNESSETH:

"That the donor, for and in consideration of the loyal and faithful services rendered to him by the Donees and as a sign of affection mutually accorded, do by these presents, donate, transfer and convey by way of donation *inter vivos* unto the said Donees, their heirs and assigns, that parcel of land with its adobe stone fence, building, garage, bodega and improvements thereon as well as all the furniture in the said building, located at Pasay, Manila, and described as follows:

'A parcel of land (Lot No. 2463 of the Cadastral survey of Pasay, Cadastral case No. 23, G. L. R. O. Cadastral record No. 1368), situated in the Municipality of Pasay. Bounded on the N. by Calle Protacio; on the E. by lot No. 2462; on the S. by lot No. 2557; and on the W. by a road; containing an area of 1,397 square meters, more or less.'

which is registered in accordance with the provisions of the Land Registration Act in the name of the Donor as owner thereof in fee simple, his title being evidenced by transfer certificate of title No. 26646 of the Office of the Register of Deeds for the Province of Rizal, and which is free from any lien or encumbrances, the said land being assessed under Tax No. 16 of Pasay, Manila, at ₱5,440; PROVIDED HOWEVER, That this donation is made by the Donor to the Donees subject to the following obligations and conditions:

'1. That the donees shall give the donor and Rosario Herardo Cruz, three cavanes of rice every two months and ₱1,000 present currency, or not less than ₱50 and not more than ₱200 per month at the return of normal times at the currency then that will be used.

'2. That the donor and Rosario Herardo Cruz, the natural mother of the donee Luz Celis de Crisostomo, shall be entitled to the right of habitation on the building and of the right of use of all the properties herein donated during the lifetime of the Donor and the said Rosario Herardo Cruz.

'3. The donees shall defray all the funeral expenses in case of death of the donor when the latter shall not have sufficient means to cover such expenses.

'4. That Aguedo Celis, a recognized natural child of the donor, shall be entitled to the right of habitation of a room located on the southwest corner of the second floor of the building donated until such time as the said Aguedo Celis shall have married and/or until his continued residence will be offensive to the donees due to his violation of the accepted standard of decency, morality, tranquility, sanitation and such other rules and regulations that the donees may reasonably impose.

'5. That the properties herein donated shall not be sold, transferred or conveyed by the donees until such time as all the children of the latter shall have reached the age of twenty one years.

'6. That in case the donor or Rosario Herardo Cruz should die, the obligation of the donees in paragraph 1 of this instrument, shall be reduced to one half of the several amounts therein specified, to be given to the survivor.'

"It is especially stated that the donee Luz Celis de Crisostomo is the recognized natural child of the donor, for the purpose of deductions provided for by law in the payment of gift tax.

"It is further stated that by virtue of this donation the donees are from this date the owners of all the properties herein donated, with right to new Transfer Certificate of Title for the above described parcel of land subject to the encumbrances mentioned as obligations and conditions above set forth.

"ACCEPTANCE

"The donees, for and in consideration of the above, hereby accept this donation as executed by the donor and each and every obligations and conditions therein mentioned.

"In witness whereof, the parties to this instrument have hereunto set their hands in Pasay, Manila, this 12th day of November, 1944.

"Sgd. ARTURO CELIS
Donor

"Sgd. VICENTE D. CRISOSTOMO
Donee

"Sgd. LUZ CELIS CRISOSTOMO
Donee

"In the presence of:

"Sgd. ROQUE INOCENCIO
Witness

"Sgd. ANGEL S. SALCEDO
Witness

"REPUBLIC OF THE PHILIPPINES

"In Pasay, Manila, this 12th day of November, 1944, before me personally appeared Arturo Celis Robledo, as the donor, and Vicente D. Crisostomo and Luz Celis de Crisostomo, as the donees, personally known to me, who are the same persons who executed the foregoing donation of land, adobe stone fence, building, garage, bodega, and improvements and furniture and acknowledged the execution thereof as their free will and voluntary act and deed. This instrument contains two pages and is signed by the said parties and their witnesses on the left hand margin of the first page and at the end of the donation in the second page. They exhibited their residence certificates No.

A–214562, A–026332 and A–1976689, issued at Pasay, Manila, on Jan. 21, Feb. 8 and June 1, 1944, respectively.

"DOC. 92; Page 65
"BOOK I; Series of 1944

"Sgd. ANGEL S. SALCEDO
"Notary Public
"Until Dec. 31, 1944."

En su contestación, Ramón, Victoria y Vicente apellidados Crisóstomo niegan expresamente que Alfredo, Eva, Augusto y Pilar Celis son hijos naturales reconocidos de los mencionados Arturo Celis y Rosario Herardo Cruz; y en contrademanda piden que los demandantes les reembolsen las cantidades de ₱165 mensuales, por alquileres desde el abril de 1945; ₱500, por moblaje desaparecido; ₱1,000, por árboles cortados; ₱2,000, por un garage y bodega; y ₱2,000, en concepto de daños y perjuicios.

Aportadas las pruebas de ambas partes, el juzgado *a quo* dictó esta sentencia:

"Por tanto, el Juzgado falla esta causa: (*a*) sobreseyendo la demanda de autos; (*b*) condenando al demandante Augusto Celis a pagar a los demandados, o a su representante legal, la suma de ₱1,000 como valor del garage, mas la suma de ₱435 como alquileres cobrados por el; (c) authorizando a los demandados a retirar para si las cantidades depositadas en la Escribanía de este Juzgado como alquileres de la casa en cuestión desde el mes de febrero hasta el mes de junio de 1946 por Zenaida Philipps, mas otras cantidades que ésta ha de depositar, en el concepto mencionado, hasta que termine definitivamente esta causa; (*d*) declarando definitiva y perpetua la orden de interdicto prohibitorio preliminar expedida en esta causa con fecha 3 de enero de 1946, por la que se prohibe a los demandantes entrar y ejecutar actos de posesión en las propiedades en cuestión, cancelándose la fienza prestada por los demandados para la consecusión de dicho interdicto; y (*e*) condenando a los demandantes el pago de las costas."

Para ante este Tribunal de Apelaciones se alzaron los demandantes contra este fallo, atribuyéndole errores, a saber:

"I

"The lower court erred in not holding the property described in transfer certificate of title No. 26646 and subsequently cancelled by transfer certificate of title No. 76229 belonged to the partnership of Arturo Celis and Rosario Herardo Cruz.

"II

"The lower court erred in not declaring all the plaintiffs as recognized natural children of Arturo Celis and/or Rosario Herardo Cruz.

"III

"The lower court erred in not declaring the deed of donation as null and void for failure on the part of the donees to comply with the condition contained therein, particularly paragraphs 1 and 3.

"IV

"The lower court erred in not declaring that even if the donees have complied with the conditions, at least the donation is void with respect to the half of the property pertaining to Rosario Herardo Cruz.

"V

"The lower court erred in sustaining the counterclaim and in finding that there was a garage in the property which was destroyed by Augusto Celis.

"VI

"The lower court erred in adjudicating the rents to the defendants in their entirety."

El segundo, de entre los primeros cuatro errores relacionados, require previa determinación por afectar a la personalidad de los demandantes para instituir esta causa.

El reconocimiento puede ser: voluntario o compulsorio, o como dice el autor Sr. Manresa:

"* * *; de donde resulta que el reconocimiento tiene dos orígenes: 1.°, la voluntad de los padres, libremente manifestada y cumplida; 2.°, la sentencia firme que obliga a ello, en los casos en que el hijo puede exigirlo." (1, pp. 614 & 615)

Alfredo, Eva, Augusto y Pilar Celis no han tratado de demostrar, ni pretenden que Arturo Celis y Rosario Herardo Cruz en vida les han reconocido, voluntariamente, como hijos naturales, ni que hayan sido obligados a ello por sentencia firme, de conformidad con lo que se dispone en los artículos 131, 135 y 136 del Código Civil. Pero en su alegato sostienen:

"* * * We submit that the conclusion is not justified by the evidence, for it has been amply demonstrated by the testimony of Maria Ilustre Vda. de Ocampo, Manuel Bernabe, Pilar Celis and Augusto Celis, that they have always enjoyed the status of natural children and have been considered as such by Arturo Celis and Rosario Herardo Cruz and even by the mother of the defendant Luz Celis Crisostomo, their sister. Since they were born, they have used the surname Celis, were brought up under the same roof and have been presented by their parents, Arturo and Rosario as thier children to the public and have been recognized by them as their natural children." (Alegato de los apelantes, p. 11.)

Con ello invocan la aplicación de los referidos artículos 135 y 136 en los que se reconoce "* * * la posesión continua del estado de hijo natural * * *", como motivo legal para compeler al padre o la madre a reconocer a un hijo natural. Es de notar, sin embargo, que en su demanda no solicitan su reconocimiento compulsorio, porque alegan que son hijos naturales ya reconocidos de Arturo Celis y Rosario Herardo Cruz, afirmación esta que niegan los demandados. No se ha planteado, por lo tanto, en el juzgado de origen una acción de reconocimiento, por medio de los escritos de demanda y contestación, lo que se hubiera podido hacer conjuntamente con la acción principal, siguiendo la doctrina sentada por el Tribunal Supremo en Briz *vs.* Briz (43 Phil., 763) y Suarez *vs.* Suarez (43 Phil., 903). Por esta razón, el juzgado *a quo*, al apreciar las pruebas aportadas, halló que Alfredo, Eva, Augusto y Pilar Celis no han podido establecer que:

"* * * fuesen, cuando menos hijos naturales de las personas ya mencionadas (Arturo Celis y Rosario Herardo Cruz), y mucho menos han acreditado que Arturo Celis los hubiese reconocido como tales."

La circunstancia, extraña y adversa a la pretensión de los demandantes, de que habiendo Arturo Celis reconocido en la

escritura de donación Annexo A a Aguedo y Luz Celis, como sus hijós naturales, se haya abstenido de hacerlo así en cuanto concierne a Alfredo, Eva, Augusto y Pilar corrobora la conclusión a que ha llegado el juzgado en su decisión de que los mismos no son hijos naturales de Arturo Celis y Rosario Herardo Cruz, y menos aún que hayan sido reconocidos como tales por aquél.

En Briz *vs.* Briz, *supra,* se dijo:

"1. SUCCESSION; NATURAL CHILDREN AS HEIRS.—Under the provisions of the Civil Code only legally acknowledge natural children have the character of heir; and the mere fact that a child has been in the uninterrupted possession of the status of a natural child does not actually make it a legally recognized child.

"2. NATURAL CHILD; LEGAL RECOGNITION; HOW EFFECTED.— To be legally acknowledge, in the sense necessary to constitute a natural child as the heir of his father, there must be either a voluntary recognition in one of the ways contemplated in article 131 of the Civil Code or an involuntary recognition resulting from a decree of the court compelling recognition, as contemplated in article 135." (Syllabus.)

La no interumpida posesión del estado de hijo natural, como ya se ha dicho, es sólo motivo legal para compeler al reconocimiento. No es el hecho del reconocimiento mismo que califica de heredero al reconocido.

En Suarez *vs.* Suarez, *supra,* bajo la ponencia del Magistrado Street, se enunció esta doctrina:

"The plaintiff does not claim that she has ever been acknowledged as a natural child of Manuel Suarez in either of the ways prescribed in article 131 of the Civil Code; neither has she ever obtained any judicial decree compelling recognition, as contemplated in article 137 of the Civil Code, her claim being rested on the alleged circumstance, that she has been in the uninterrupted possession of the status of a natural child of said Manuel Suarez, justified by the conduct of her father himself or of his family, as contemplated in No. 2 of article 135 of said Code.

"The present action must therefore be considered in the nature of a complex action in which the plaintiff seeks to obtain a judicial declaration of her status as a recognized natural child and at the same time to procure a division of the estate and the allotment to her of the portion appropriate to her as a natural child of Manuel Suarez and coheir of his legitimate children. An action of this complex character can undoubtedly be maintained, provided all the conditions are present which are necessary to justify relief in both aspects of the case. (Briz. *vs.* Briz and Remigio p. 763, *ante.*)

"Upon the question whether the plaintiff has in fact enjoyed the continuous possession of the status of natural child of Manuel Suarez, justified by the acts of Manuel Suarez, or his family, the trial judge found adversely to the plaintiff; and he also found that, even supposing that she had enjoyed the possession of such status, her action to enforce partition of the estate of Manuel Suarez is barred by the statute of limitations.

"In the view that we take of the case, the question of prescription is absolutely determinative of the case in two different aspects; and it therefore becomes unnecessary for us to consider the question whether the plaintiff has in fact enjoyed continuous possession of the status of a natural child, as claimed.

"In this connection the trial judge found that the plaintiff was born between the 18th and 25th of July, 1896, a finding which, in the

light of the evidence, is in our opinion incontrovertible. This being true, she arrived at the age of majority not later than July 25, 1917 (Act No. 1891). Under section 45 of the Code of Civil Procedure, the plaintiff had two full years from that date within which she was at liberty to institute an action to compel acknowledgment. We say two years, and two years only, because it is clear that the provisions now governing the prescription of the action to compel acknowledgment under No. 1 of article 137 of the Civil Code, are found in sections 44 and 45 of the Code of Civil Procedure, with the result that such action must be instituted at the latest within two years after the attainment of majority, the alleged natural parent being dead.

"The original action in this case was instituted on July 28, 1920, or one year and three days after the expiration of the two years within which the plaintiff could have instituted an action to compel acknowledgment. It results that at the time this complaint was filed, any action on the part of the plaintiff to compel acknowledgment had prescribed."

Aun suponiendo que Alfredo, Eva, Augusto y Pilar Celis, por el motivo legal de la posesión constante del estado de hijo natural, hayan solicitado en esta causa su reconocimiento, planteando esa acción en sus precisos términos, se hubíese encontrado, como encuentra ahora en el alegato de los apelados, con la objeción de que está prescrita.

En efecto, por el orden que en el párrafo 2 de la demanda se nombran a los demandantes, a saber: Alfredo, Eva, Augusto, Aguedo y Pilar Celis, como hijos de Arturo Celis y Rosario Herardo Cruz, es de apreciar que el primero, Alfredo y la última, Pilar, son el mayor y la menor de todos los hermanos. En 19 de junio de 1945, fecha del archivo de la demanda de autos, Augusto y Pilar Celis debían tener 42 y 34 años de edad respectivamente, porque en 12 de marzo de 1946 al declarar como testigos dijeron tener el primero 43 y la segunda 35 años de edad. Rosario Herardo Cruz y Arturo Celis fallecieron, aquélla, en 12 de enero y, éste, en 4 de mayo de 1945. Teniendo a Pilar por la más joven de entre los hermanos, ella debía tener en 4 de mayo de 1945 la edad de 34 años, o había alcanzado la mayoría de edad 13 años antes del fallecimiento de Arturo Celis; y sí se computa la edad de Augusto, resultará que, cuando el inició esta causa en 19 junio de 1945, ya era mayor de edad 21 años atrás. Se tiene, por lo tanto, que la aseveración hecha por Alfredo, Eva, Augusto y Pilar Celis en su demanda de que son hijos naturales reconocidos de los difuntos Arturo Celis y Rosario Herardo Cruz no solamente no ha sido substanciado sino que al parecer han tratado de cambiarla por la pretensión de que han gozado de una manera ininterrumpida del estado de hijo natural de los mismos Arturo Celis y Rosario Herardo Cruz, cambio esta que no se ha hecho en los escritos de alegaciones, y que, al plantearse ahora en apelación, se encuentra con la objeción de los apelados de que en tal caso la acción de los demandantes está prescrita.

Aguedo y Luz Celis, hijos naturales reconocidos de Arturo Celis, fallecieron, al parecer con motivo de la liberación, en

7 y 11 de enero de 1945, respectivamente, o con anterioridad al archivo de la demanda de autos.

Decidido este segundo error en contra de los apelantes, y sostenida la apreciación del juzgado *a quo* de que ellos no son hijos naturales reconocidos de Arturo Celis y Rosario Herardo Cruz, ya no es preciso considerar los otros errores que tienen relación con su demanda.

Concerniente a los errores quinto y sexto, lo que dice el Juzgado en su decisión, de que

"En cuanto a las reclamaciones de los demandados, el Juzgado encuentra acreditado por la preponderancia de pruebas que el demandante Augusto Celis mandó derríbar al garage que el donatorio Vicente D. Crisóstomo había mandado construir junto a la casa en cuestión y que dicho demandante se apropió de los materiales removidos. Dada la descripción de dicho "garage" hecha por los testigos, tanto en sus materiales y dimensiones, y dada la época en que se construyó, el Juzgado calcula su valor en mil pesos (₱1,000.00) solamente; y declara que el demandante Augusto Celis debe pagar su valor a los demandados, que son los herederos de dicho Vicente Crisóstomo, o a la administradora de la herencia de éste si todavía no esta cerrada la actuación, o sea, Romana Crisóstomo de Tiongson.

* * * * * * *

"Respecto de los alquileres de la casa, alegadamante cobrados por Augusto Celis, el Juzgado opina, y así declara, que deben ser reembolsados por Augusto Celis a los demandados. El no tenía ni tiene derecho de apropiarse de dichas rentas. Según las pruebas en autos, dichos alquileres cobrados son: de José Villareal, a razón de cuarenta pesos (₱40 mensuales desde el 15 de abril el 31 de octubre de 1945, o sean ₱260; de Antonio Fernándo o Fernández, ₱75 por un mes; de un ruso llamado Hich, la suma de ₱100 como renta por un mes, por lo menos, o sean un total de ₱435",

esta basada en las pruebas aportadas, pues que el garage se menciona en la escritura de donación Exh. A, como una de las construcciones donadas, y declarando Jose Villareal, sobre el mismo y la casa que él ocupó como inquilino, afirmó:

"Q. Cuando usted ocupó esa casa, pago usted algún alquiler?—A. Sí.

"Q. Cuanto pagaba usted al mes?—A. ₱45.

"Q. Hasta cuando ocupó usted esa casa?—A. Hasta fines de octubre.

"Q. Pago usted desde el mes de abril hasta el mes de octubre los alquileres de esa casa al Sr. Augusto Celis?—A. Sí, tengo recibos de esos pagas.

* * * * * * *

"Q. Cuando usted vió por primera vez esa casa en la calle Protasio No. 185, sabe usted si había garage o no había garage allí?—A. Había una especie de garage.

"Q. Y cuando usted se marchó de esa casa, continuaba allí ese garage o no?—A. No mas.

"Q. Donde estaba ese garage entonces, donde se quedó?—A. No lo se.

"Q. No ha visto usted quien lo ha removido?—A. El Sr. Celis.

"Q. El Sr. Celis lo removio?—A. Sí.

"Q. Que clase de garage era?—A. Una especie de garage para autos.

"Q. Pero de que materiales?—A. De zinc y postes de madera." (t.n.t. pp. 5–7)

El testigo se refería a Augusto al nombrar a un tal Celis, que había quitado el garage.

SE CONFIRMA la sentencia apelada en todas sus partes, con las costas a los apelantes. Así se ordena.

Jugo y Paredez, MM., están conformes.

Se confirma la sentencia.

[No. 1807–R. Julio 9, 1948]

HEIRS OF PABLO CONCEPCIÓN—ROSARIO CRUZ DE CONCEPCIÓN, LAURETA CONCEPCIÓN, and LINDA CONCEPCIÓN, plaintiffs and appellees, *contra* BAGUIO MANUFACTURING & CONSTRUCTION, INC., defendant and appellant.

PATRONO Y OBRERO; LEY DE COMPENSACIÓN OBRERA; INGRESO BRUTO DE LA INDUSTRIA; ARTÍCULO DE LA LEY 3428, COMO FUÉ ENMENDADO POR LA LEY 3812 ES APLICABLE; CASO DE AUTOS.—El artículo 42 de la Ley 3428, como fué enmendado por la Ley 3812, preceptua que si el ingreso bruto correspondiente al año anterior, de una pequeña industria, fué menor de ₱20,000 las reclamaciones por accidente se regirán por las disposiciones de la Ley No. 1874, que regula la responsabilidad de los patronos para con sus emplados y obreros. Si esta disposición se interpreta estrictamente por su letra, debe tramitarse bajo la Ley No. 1874, toda reclamación por compensación si el ingreso bruto de la industria no alcanzó a ₱20,000 en el año que precede al accidente. Pero, si se estima en su espíritu de una legislación en favor de la clase obrera bastaría, como en el presente caso, en que por un trimestre de existencia la compañía demandada ha obtenido un ingreso mínimo de ₱8,736.19 para llegar a la conclusión de que normalmente obtendría un ingreso de ₱34,944.76 al año o más, a medida de su desarollo, siguiendo la pauta de interpretación establecida por el Tribunal Supremo en Francisco *contra* Consing (63 Jur. Fil., 385).

APELACIÓN contra una sentecia del Juzgado de Primera Instancia de Baguio. Concepción, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Eduardo Banal en representación del apelante.

Jaramillo & Claridad, Aquino, Fañgonil, Lardizabal y *Leaño* en representación de los apelados.

DE LA ROSA, *M.:*

Rosario Cruz de Concepción y Laureta Concepción reclaman de Baguio Manufacturing and Construction, Inc. la cantidad de ₱3,300, como compensación por la muerte de Pablo Concepción, esposo de la primera y padre legítimo de la segunda.

En la vista, ambas partes sometieron el siguiente:

"AGREED STATEMENT OF FACTS

"Come now the parties, plantiffs and defendants through their respective counsel, and respectfully submit before this Honorable Court the following agreed statement of facts:

"1. That plaintiff Rosario Cruz de Concepcion is of legal age and a resident of Cariño Subdivision, Baguio, Philippines, and plaintiff Laureta Concepcion is a minor, being four years of age, and represented herein by her mother Rosario Cruz de Concepcion as her guardian *ad litem;* while the defendant Baguio Manufacturing and Con-

struction, Inc., is a corporation duly organized, registered and existing in accordance with the laws of the Philippines, with principal office at the City of Baguio:

"2. That the plaintiff Rosario Cruz de Concepcion is the widow of the deceased Pablo Concepcion with whom during the lifetime of the latter she was living and actually and totally dependent upon before and up to March 24, 1947;

"That the plaintiff Laureta Concepcion is the only legitimate child of Rosario Cruz de Concepcion and the deceased Pablo Concepcion, now four years of age, unmarried and incapable of supporting herself, but totally and actually dependent upon the deceased Pablo Concepcion before and up to March 24, 1947;

"3. That the defendant Baguio Manufacturing and Construction, Inc., otherwise advertised with the firm name BAMACO, has been before on or after March 24, 1947, engaged in the manufacture and sale of lumber, in the sale of hardware and pieces of furniture, in building construction and other allied business with head office at the City of Baguio, Philippines, and that Pablo Concepcion had been, during his lifetime, a driver of the defendant corporation; that on the 24th day of March, 1947, he was a driver of the said corporation;

"4. That at or about 8:00 o'clock in the evening of March 24, 1947, the said Pablo Concepcion met an accident when the truck he was driving and belonging to defendant corporation, then loaded with lumber, fell down a road embankment at Barrio Longlong, La Trinidad, Benguet, Mountain Province, as a result of which said Pablo Concepcion died instantly;

"5. That at the period of the accident mentioned, the driver Pablo Concepcion was receiving from the defendant corporation a daily wage of ₱4, Philippine currency, working seven days a week or a weekly salary of ₱28;

"6. That on April 30, 1947, or within two (2) months from the date of the accident, the plaintiffs filed a notice of injury or sickness and claim for compensation, D. of L. Form No. 77, through the office of the Public Defender, City of Baguio, against the defendant corporation, copy of which is attached hereto as Exhibit A; that the defendant corporation submitted to the Department of Labor Form No. 77–A, Employer's Report of Accident or Sickness, copy of which was furnished to the Office of the Public Defender, City of Baguio, which copy is attached hereto as Exhibit B; which report was signed 'BAMACO by: Florencio Villanueva, President and General Manager' thereof.

"Wherefore, the above agreed statement of facts is hereby submitted before this Honorable Court.

"Baguio, Philippines, July 24, 1947.

"BAGUIO MANUFACTURING AND CONSTRUCTION, INC. (BAMACO)
"By: Sgd. FLORENCIO VILLANUEVA
"Defendant

"Sgd. ROSARIO CRUZ DE CONCEPCION
"In her behalf and as guardian ad
"litem of minor Laureta Concepcion
Plaintiffs

"Sgd. EDUARDO BANANAL
"Atty. For the Defendant Co.
"Naguilian, La Union

"Attys. JARAMILLO & CLARIDAD
"By: Sgd. JESUS JARAMILLO
"Office of the Public Defender
"Baguio

"AQUINO, FAÑGONIL & LARDIZABAL
"By: Sgd. L. LARDIZABAL
"Attorneys for the Plaintiffs
"Baguio."

El Juzgado *a quo* dictó esta sentencia:

"In view of the foregoing, the Court decides this case in favor of plaintiffs and against defendant. Defendant Baguio Manufacturing & Construction, Inc., is hereby ordered to indemnify and pay to plaintiffs Rosario Cruz de Concepcion and Laureta Concepcion the amount of ₱2,000, to be paid as follows: ₱800 shall be paid as soon as this decision becomes final, and the rest, ₱1,200 shall be paid in equal monthly instalments of ₱100 a month until fully paid. Upon failure of defendant to pay the amount of ₱800 the next day after this decision shall have become final, or any of the monthly instalments in the manner provided for in this decision, the whole sum of ₱2,000 or any of the remaining part still unpaid shall become due and collectible and a writ of execution to satisfy this judgment, for the whole amount or any unpaid balance, shall be issued, and the Sheriff shall immediately proceed to levy on the properties of defendant corporation as the law directs for the immediate satisfaction of this decision. Defendant shall pay the costs."

Contra este fallo, BAMACO se alzó para ante este Tribunal de Apelaciones, atribuyéndole errores, a saber:

"PRIMER ERROR

"The lower court erred in finding that defendant corporation contracted to buy logs from one Iloc Bilag and instructed Pablo Concepcion, the deceased driver, to haul such logs from Bilag's concession at Longlong."

Yloc Bilag, un concesionario en el barrio de Longlong, de la jurisdicción de Trinidad, Benguet, Provincia Montañosa, aseverando que en 24 de marzo de 1947 contrató con Florencio Villanueva, Presidente y Gerente General de BAMACO, la venta de trozos de madera, dijo:

"Q. Did Mr. Villanueva finally send for those lumber of yours that you had in Longlong?—A. Yes, sir.

"Q. How did he send for those lumbers?—A. He sent the truck of the company.

"Q. When did he send the truck of the company?—A. That same day when we went there.

"Q. Whom did he order to get those lumber with the truck of the company?—A. The driver, Pablo Concepcion.

"Q. As ordered by Mr. Villanueva, did that driver Pablo Concepcion go with the truck to get the lumber?—A. Yes, sir.

"Q. When did Pablo Concepcion go to Longlong to get the lumber with the truck?—A. That same day—on the 24th day of March.

"Q. What time of the day did Mr. Pablo Concepcion go to Longlong to get the lumber?—A. Between 8:00 and 9:00 o'clock in the morning.

"Q. Did you go with Mr. Pablo Concepcion to Longlong riding in the truck of the defendant company from Baguio?—A. Yes, sir, we started from Baguio." (t.n.t.. pp. 6 and 7)

BAMACO contiende que su Gerente Villanueva no contrató en ese día 24 de marzo con Bilag sino con un tal Frederick Palgue, que tenía su concesión cerca del cementerio de la ciudda, en Asin Road, y allí envió a Pablo Concepción para acarrearlos.

Bilag, preguntado si tenía algún compañero cuando contrató con Villanueva, declaró:

"Direct examination.

"Q. Who was your companion?—A. Frederich Falgue. (t.n.t., p. 6.)

"Cross examination.

"Q. Was not Mr. Falgue with you, because he was the one to sell the lumber belonging to him to the Company?—A. No, sir." (t.n.t., p. 10.)

El Juzgado dió crédito al testimonio de Bilag, y las circunstancias del caso justifican su apreciación.

"SEGUNDO ERROR

"The lower court erred in holding that when Pablo Concepcion met his death he was performing his duties as a driver of defendant corporation in pursuance of instruction given by the latter.

"TERCER ERROR

"The lower court erred in holding that the notorious negligence of the deceased driver Pablo Concepcion has not been proven."

En el convenio de hechos consta que Pablo Concepción manejaba un truck de BAMACO, cargado de trozos de madera, cuando ocurrió el accidente que le mató; y Bilag, que con él iba en esa precisa ocasión, relata:

"Q. And about five o'clock in the afternoon, before it was dusk, you stated that you had already loaded the logs in the truck, is that right?—A. Yes, sir. That is true.

"Q. And the deceased driver Pablo Concepcion wanted to bring the logs immediately to Baguio for the Baguio Manufacturing & Construction, Inc., is that right?—A. Yes, sir, to the sawmill of the BAMACO.

"Q. Was it already night time when you started on your way to Baguio for the BAMACO?—A. It was after twilight..

"Q. Did you not start right away after loading the truck?—A. No, sir.

"Q. And what did you tell the deceased Pablo Concepcion when you knew that he was carrying a heavy load of logs at night time?—A. I told him that the truck should remain in the mountain that night and that we should start in the morning because of the condition of the road which we were to take; but he said that they would reprimand him if he would not bring the truck home.

"Q. Do you mean to say that you wanted the driver Pablo Concepcion and the rest of you to sleep that night in Longlong so that the logs would be delivered in the morning?—A. Yes, sir.

"Q. On that day, March 24, 1947, was it raining hard?—A. No, it was not raining hard. There was no strong rain, but it was raining a little.

"Q. But was it not raining for sometime?—A. Not so much, but the rain was such that the road from Longlong, which was just a little better than a horse trail, was slippery and dangerous.

"Q. And that was why you wanted the driver to sleep in Longlong that night and then to go to Baguio the following morning, is that it?—A. Yes, sir, because the road was slippery and dangerous.

"Court.

"Q. But did you come back to Baguio that night with the driver in the same truck, or were you left at Longlong?—A. When I went home, I went with the truck.

"Q. Therefore, when the truck fell by reason of which Pablo Concepcion died, you also fell with him, is that right?—A. Yes, sir. We fell together. My left eye and my left neck were hurt.

"Mr. Bananal:

"Q. Who owned the logs that you loaded in the truck?—A. Those were mine which were intended to be delivered to the BAMACO sawmill.

"* * * * * * *"

"Q. How far had the truck traveled from its starting point to the place where it fell?—A. One kilometer, more or less.

"* * * * * * *"

"Q. Do you know what caused the accident on the truck?

"* * * * * * *"

A. I do not know. As we were going on, all of a sudden the truck fell.

"Q. Did the truck fall in a curve?—A. It was in a littel curve, sir.

"Q. Was it to a deep precipice where the truck fell?—A. Not so deep.

"Q. About how many meters deep?—A. Yes, sir. About from that picture frame to the table. "(Witness indicated a height of about two or three meters).

"* * * * * * *"

"RE-DIRECT EXAMINATION BY

"Mr. Lardizabal:

"Q. How fast was the truck running just before it fell into the embankment?—A. It was running slowly. (t.n.t., pp. 13–17.)

Bilag es el único testigo que ha declarado sobre este accidente en que él sufrió lesiones.

Se contiende que Pablo Concepción incurrió en negligencia notoria al no quedarse y pasar la noche en Longlong, como le había propuesto Bilag, en vista de la llovizna que hacía resbalosa la carretera. Mas, cuando Bilag mismo se embarcó en el truck con Pablo Concepción en esa noche, de vuelta a Baguio, llevando trozos con destino a BAMACO Sawmill, es señal que no había riesgo inminente, sobre todo con la precaución en que iban, según Bilag,

"* * * running slowly."

Bilag afirma que el truck cayó de súbito, inadvertidamente. Si marchando con cautela ocurre un accidente imprevisto, debido a las condiciones de la carretera, como parece haber ocurrido el de autos, no es de atribuir ni mera negligencia al chófer, a Pablo Concepción en este caso.

"CUARTO ERROR

"The lower court erred in not expressly holding that this case does not fall under the workmen's Compensation Act but rather under the Employers' Liability Act."

BAMACO comenzó a abrir y operar sus negocios en octubre de 1946 (Exhíbito 3), de modo que su existencia en dicho año fué de tres meses, de octubre a diciembre, período en que según su representación,

"* * * in suport of this defense, it introduced uncontroverted evidence that such gross income was ₱8,736.19 only. This amount even including defendants, pre-incorporation transactions from October 1 to 25, 1946 * * *." (Alegato del Apelante pp. 13 y 14.)

Examinando el *statement of account* de BAMACO, Exhíbito 3, se halla que sus ingresos brutos montaron a ₱4,620.28 en octubre, ₱4,099.99 en noviembre y ₱3,381.93 en diciembre, o sea en los tres últimos meses de 1946 tuvo un ingreso total ₱12,102.20.

El Artículo 42 de la Ley 3428, como fué enmendado por la Ley 3812, preceptúa que si el ingreso bruto correspondiente al año anterior, de una pequeña industria, fué menor de ₱20,000 las reclamaciones por accidente se regirán por las disposiciones de la Ley No. 1874, que regula la respon-

sabilidad de los patronos para con sus empleados y obreros. Si esta disposición se interpreta estrictamente por su letra, debe tramitarse bajo la Ley No. 1874 toda reclamación por compensación si el ingreso bruto de la industria no alcanzó a ₱20,000 en el año que precede al accidente. Pero si se estima en su espíritu de una legislación en favor de la clase obrera bastaría como en el presente caso en que por un trimestre de existencia BAMACO ha obtenido un ingreso de ₱8,736.19, según dice en su alegato, y ₱12,102.20, según consta en sus cuentas Exhíbito 3, para llegar a la conclusión de que normalmente obtendría un ingreso de ₱34,944.76 a ₱48,408.80 al año o más, a medida de su desarrollo.

En Francisco *vs.* Consing (63 Fil., 385), el Tribunal Supremo, estableciendo una pauta de interpretación a la Ley de Compensación Obrera, dice:

"* * * Por otra parte, 'además de los casos que declaran que a la ley sobre compensación de obreros se le debe dar una interpretación que favorezca al empleado, muchos otros declaran que las leyes deberán o deben ser interpretadas justa, razonable o liberalmente a favor o en beneficio de los empleados o de las personas que de ellos dependen para vivir, resolviéndose todas las dudas en cuanto al derecho a una compensación en su favor, y aplicándose todas las precauciones también en su favor, y existen, además, disposiciones legales para una interpretación liberal en favor de empleados lesionados.' (71 C. J. 351, 352.) La intención de la Legislatura debe deducirse de la necesidad o de la razón de la Ley, y el significado de las palabras deberá colegirse de una consideración total de la Ley, y las dudas con respecto al derecho a la compensación deberán ser resueltas en favor de los empleados o de los que de ellos dependan.' (Schneidor: The Law of Workmen's Compensation, 2132, 2133.)"

"QUINTO ERROR

"The lower court erred in not dismissing the case.

"SEXTO ERROR

"The lower court erred in ordering the defendant corporation to pay ₱2,000 compensation to the plaintiffs."

De los anteriores errores la apelante deduce estos dos últimos.

Las demandantes tenían derecho a una compensación mayor a la adjudicada, pero ellas no apelaron contra la decisión del juzgado *a quo*.

Se confirma la sentencia apelada en todas sus partes, con las costas a la corporación apelante.

Así se ordena.

Jugo y *Paredes, MM.*, están corformes.

Se confirma la sentencia.

[No. 1261-R. July 10, 1948]

REGINO FERNANDEZ, plaintiff and appellee, *vs.* JULIO PEDRAZA, defendant and appellant

MORTGAGE; INTEREST, WHEN DUE; PAYMENT OF INTEREST IN THE ABSENCE OF DOCUMENTS EVIDENCING RATE OF INTEREST AGREED UPON; EVIDENCE; CERTIFICATE OF TITLE, DORSAL ANNOTATION

ON; CASE AT BAR.—While it is true that "interest shall be due only when it has been expressly stipulated" (art. 1755, Civil Code), it may, however, be allowed in the case at bar although the only existing record of the mortgage deed—an annotation on the reverse side of the transfer certificate of title No. A–193 of the Office of the register of deeds of Cavite—does not state anything about interest. Considering the facts in this case, the testimony of reliable witnesses, and the established practice of the register of deeds of Cavite in not making annotation of rates of interest in similar mortgages, the Court erred in declaring that the annotation in the "4th column" on said transfer certificate of title proved that no stipulation with respect to the payment of 12 per cent interest on the obligation of ₱250 has been agreed upon, simply because in the said annotation no mention is made of interest at 12%.

APPEAL from a judgment of the Court of First Instance of Cavite. Alfonso, J.

The facts are stated in the opinion of the court.

Jorge V. Jazmines for appellant.
Valentin B. Encarnacion for appellee.

PAREDES, *J.:*

In his complaint, Regino Fernandez prayed that Julio Pedraza be ordered to execute the corresponding deed of cancellation of a real estate mortgage in his favor and to receive the sum of ₱250 deposited with the clerk of court in payment of the said mortgage. The defendant filed an answer, asking that the complaint be dismissed and that he be paid the sum of ₱200 as damages in view of the filing of this suit. The Court rendered judgment as follows:

Por las consideraciones expuestas, dictoso sentencia condenando al demandado Julio Pedraza a otorgar la escritura de cancelación de la escritura de hipóteca otorgada a su favor por Socorro Ponce el 19 de octubre de 1941. Se ordena, asimismo, que una vez firme esta decisión, haya o no otorgado por el demandado la escritura de cancelación, el Registrador de Títulos de la Provincia de Cavite cancelará la anotación hecha al dorso del certificado de transferencia de título No. A–193.

Se absuelve al demandante de la contrademanda, con las costas del juicio a cargo del demandado.

On appeal, the Defendant presented seven assignments of error. The most important and upon which the others resolve, raises the question as to whether or not interest should be adjudged in favor of the Defendant on the sum of ₱250.

On October 13, 1941, Socorro Ponce executed a mortgage on her house and lot No. 1126–F, situated in Cavite covered by transfer certificate of title No. 13515, in favor of the defendant Julio Pedraza to secure the payment of her obligation to the latter in the amount of ₱250. As Socorro had no money to pay the loan she authorized the defendant to sell the same for ₱1,000 (Exhibit 3). The defendant, however, offered to buy the property for himself, so, in the

month of June, 1943, after a computation of Socorro's obligation, including unpaid taxes, she ordered the defendant to have the corresponding documents prepared, to-wit: (*a*) deed of cancellation of the mortgage (Exhibit 1), and (*b*) deed of absolute sale of the property in favor of the defendant (Exhibit 2). The defendant and the notary public went to Socorro's residence with these documents, but she could not sign them because she did not have then a residence certificate. When the defendant and the notary public returned the following Monday or Tuesday, Socorro had already sold the property to plaintiff Regino Fernandez for the sum of ₱1,000. On August 4, 1943, the defendant received from Atty. Demetrio B. Encarnacion a letter (Exhibit 4), advising him that Socorro was ready to cancel her mortgage, and that the property was sold to the plaintiff. The defendant advised Attorney Encarnacion (Exhibit 5) that she had no objection to execute the deed of cancellation upon receipt of the total obligation of Socorro, including interest. On August 14th, the plaintiff and Attorney Encarnacion appeared in the office of the defendant's attorney, but offered to pay only the sum of ₱250, without interest, alleging that no interest was stipulated. Inasmuch as none of the parties could produce the copy of the mortgage deed because their copies and those of the register of deeds of Cavite were either destroyed by fire or lost, the parties agreed to postpone the settlement of their controversy until the defendant shall have been able to see Attorney Rosal before whom the deed of mortgage was acknowledged. Notwithstanding the efforts of the defendant to locate Attorney Rosal, Attorney Encarnacion presented this action on August 18, 1943. The following stipulation of facts was entered into by the parties and duly approved by the court on November 5, 1946:

(1) That cadastral lot No. 1126–F with transfer certificate of title No. 13515 of Cavite, was mortgaged by one Socorro Ponce on October 13, 1941, in favor of defendant Julio Pedraza;

(2) That the plaintiff Regino Fernandez acquired the above property by way of absolute sale from the owner Socorro Ponce on July 28, 1943, and by virtue of said sale, T.C.T. No. 13515 was cancelled and in lieu thereof, T.C.T. No. A–193 was issued in the name of the plaintiff, with the corresponding annotation of mortgage referred to in the first paragraph of the stipulation of facts;

(3) That the plaintiff has deposited the sum of ₱250 to the clerk of court to cover the amount of the mortgage as claimed by him;

(4) That the only question to be determined and proved before this Honorable Court is: Whether in the amount of ₱250 interest has already been included or not; and also the claim of both parties for damages.

The witnesses for the defendant were unanimous in stating that interest at the rate of 12 percent per annum, was provided in the mortgage contract. The defendant testified as follows:

P. Puede usted decir al Honorable Juzgado la razon porque no está aún pagada esa hipoteca?—R. I say that the mortgage has not been paid because I was not paid the principal plus the corresponding interests on the loan.

Q. Do you mean to say that besides the principal sum of two hundred fifty pesos there was an agreement had between you and Socorro to the effect that she would pay interests on the said loan?—A. Yes, sir.

Q. At what rate of interest?—A. Twelve per cent per annum. (Pages 2 and 3, t. s. n., stenographer Miranda.)

"* * * * * * *

P. Puede usted darnos la razón o motivo porque en el Exhíbit "1" de ustedes, no se ha puesto el tipo de interes a que usted tenía derecho, según usted?—A. It is true that the rate of interest is not specified there, but I told Mr. Encarnacion that there were interests of twelve per cent (12%) per annum to be paid to me as well as the principal amount of the mortgage loan. (Page 14, t. s. n., stenographer Miranda. Exhíbit D.)

Attorney Rosal testified:

Q. Can you kindly state to the Honorable Court what was the conversation you had with Mr. Julio Pedraza concerning the mortgage?—A. I told him that Socorro Ponce wanted to mortgage the property for ₱250, then Mr. Julio Pedraza asked me the terms and conditions of the mortgage, I told him that "it will be the same as the mortgage you executed before," because this is the second mortgage executed by Socorro Ponce in favor of Julio Pedraza. Socorro Ponce executed three mortgages in which I acted as notary public, the first was in favor of Julio Pedraza, the second was in favor of Samuel Bowles, and the third was again in favor of Julio Pedraza, so I told him that the conditions in this third mortgage will be the same as the first mortgage.

Q. What are those conditions?—A. Twelve per cent per annum, that the mortgagor will pay the mortgagee 12 per cent per annum, that the mortgagor should pay the taxes to the government, and that the mortgagor would pay for my services. (Page 9, t. s. n., stenographer Nava.)

This Court has no reason to doubt the veracity of Attorney Rosal who, aside from being an officer of the court, also appears without any interest to favor the one or the other. His testimony corroborates the allegation of the defendant that 12% interest was provided for in the contract of mortgage. Withal, the trial court, in deciding this point, said:

"se observara que en la anotación correspondiente a la cuarta columna se consigna solamente la cantidad de ₱250 y ninguna mención se hace en la misma sobre pago de interes de 12 por ciento al año; y como esta anotación es un extracto de las condiciones estipuladas en la escritura de hipoteca, logicamente se puede decir que aún en la misma escritura de hipoteca no se ha hecho constar nada relativo al pago de doce por ciento al año en concepto de intereses.

The annotation referred to by his Honor is the following:

4 (*a*). "Columna "Condiciones"—"Covering the parcel of land described in this certificate of title, for the sum of ₱250 subject to all conditions stipulated in the contract of mortgage, for a period of one year, executed before the notary public for the Province of Cavite, Mr.

Eduardo Rosal (Doc. No. 372, p. 98, Book I, series of 1941) on file in this registry.

It was proven, however, that it was not the practice of the register of deeds of Cavite, to describe in detail on the back of the corresponding certificate of title, the conditions of the mortgage, and that to abbreviate the annotation of the mortgage, the said office simply placed thereon the phrase "Subject to the other conditions stipulated in the contract of mortgage." The existence of such practice has been specially noted in Exhibits 7 and 8 of similar mortgages entered into by different parties and registered in the same office, and where different rates of interest had been provided. This general clause cannot be considered as an extract of the terms and conditions of a given contract, because it does not even show the essential stipulations in the contract. If the register of deeds were to make a true extract of all these conditions and terms, the annotation would be a long one. We, therefore, hold that the trial court erred in declaring that the annotation in the "4th Column" on Transfer Certificate of Title No. A–193, proved that no stipulation with respect to the payment of 12% interest on the obligation of ₱250, had been agreed upon. (2nd assignment of error.)

The records show that about the beginning of April, 1944, the plaintiff, through his attorney, notified the defendant that the deposition of Socorro Ponce would be taken at 1:00 p.m. on April 11, 1944, in her residence at No. 2102 Azcarraga, Manila. The defendant and his attorney appeared at the hour and place designated and had waited until 2:00 p.m., but neither the plaintiff nor his attorney showed up. On May 23, 1944, at 12:47, the attorney for the defendant again received another notice for the taking of deposition of Socorro Ponce on May 22, 1944, which was received 24 hours later. On May 23, 1944, another notice for the taking of the same deposition was received by the defendant's attorney, set for May 25, 1944, at 2:00 p.m. The defendant and his attorney waited at the place designated until 3:35 p.m., but the deposition was not taken, because the plaintiff failed to compel the attendance of the witness as provided by the Rules of Court. The deposition was finally taken on July 8, 1944, in the absence of the defendant and his attorney. (Record on Appeal, pp. 7–8.) It was also alleged that each time the defendant and his attorney appeared to attend the proposed depositions which had never taken place, not because of their own fault, they had to spend ₱60 for transportation and for attorney's fees. The Court believes that the provisions of section 23, Rule 18, has been violated by the plaintiff. And in order to render attorneys more conscious of their duties and commitments, because the time lost by an attorney is unrecoverable unless he is

duly compensated, and inasmuch as the attorney for the plaintiff himself fixed the sum of ₱25 for every visit he and his client had made to the defendant, ₱15 as attorney's fees and ₱10 for food and transportation (p. 4, t. s. n.), the Court deems as reasonable the sum of ₱50 for the two trips made by the defendant for the purpose of attending

The deposition of Socorro Ponce, Exhibit D, was, as stated, finally submitted for admission as rebuttal evidence on July 10, 1944 in the absence of the defendant and his attorney, who did not appear, notwithstanding the notice by registered mail of the date of the hearing. There was, therefore, no formal opposition during the hearing as to the competency, relevancy or materiality of the testimony contained in the said deposition. While it is true that on July 8, 1944, defendant filed an opposition "to the admission upon oral examination of Socorro Ponce, if any has been taken" (p. 12, Record on Appeal), the same was not even made under oath and was not set for hearing at all. But the admission of this deposition would not alter the conclusions reached by this Court. In said deposition, Socorro alleged that she merely received ₱200, although it was made to appear in the promissory note that it was ₱250, which already included the sum of ₱50, as interest; and that it was not true "the ₱250 will earn interest at 12 per cent." Socorro's testimony has not been corroborated at all. It was natural for her to lighten her responsibility by eliminating the interest. While it is true that "interest shall be due only when it has been expressly stipulated" (art. 1755, Civil Code), it is also admitted by the plaintiff himself that there was really interest, but that it was already included in the sum of ₱250.

The appellant alleged that the lower court erred in not declaring as null and void the deposit of ₱250 in military notes made by the appellee in court. This question has not been put in issue in the stipulation of facts. At any rate, having reached the conclusion that interest was provided in the contract and that same has not been included in the amount tendered for payment, the refusal of the appellant to accept it without such interest was duly justified. (Art. 1176, Civil Code.) The consignation was, therefore, not properly made and did not release the obligation of the appellee.

The judgment appealed from is hereby reversed, without pronouncement as to costs. The appellee is ordered to pay the appellant the sum of ₱250, Philippine currency, with interest at the rate of 12 per cent per annum, to be computed from and including October 13, 1942 until complete payment thereof, and the further sum of ₱50, as reasonable expenses incurred by the appellant, for failure of the appellee to take the deposition of his rebuttal witness at the time and place specified in the notices. Upon

payment of these amounts, the appellant should execute a deed of cancellation of the mortgage. The appellant's counterclaim is dismissed, for lack of merits. It is so ordered.

Labrador and *Abad Santos, JJ.*, concur.

Judgment reversed.

[No. 1256–R. July 12, 1948]

EDITO H. TIROL, plaintiff and appellant, *vs.* C. N. HODGES, defendant and appellee

1. OBLIGATIONS AND CONTRACTS; SALE; RESCISSION; AUTOMATIC RESCISSION OF CONTRACTS NOT AUTHORIZED BY LAW.—There is no existing provision in our laws authorizing the automatic rescission of contracts for non-payment of the purchase price. Before the rescission of a contract of sale may take place, it is undoubtedly necessary that the vendor definitely choose in a manner not subject to doubt, the remedy he intends or desires to invoke, and that he duly notify the vendee of his determination by authentic means. (Article 1504, Civil Code.)

2. ID.; ID.; ID.; RECIPROCAL OBLIGATIONS, RESOLUTION OF; OBLIGEE'S RIGHTS; ARTICLE 1124, CIVIL CODE; WILL OF PARTIES IN A CONTRACT CANNOT PREVAIL OVER EXPRESS PROVISION OF LAW.—Although the parties to a contract may lay down the procedure to be followed in a given case, it must be presumed that that is so when such procedure does not go against the express provisions of the law which the will of the parties cannot overcome. (Article 1124, Civil Code; 10 Manresa, Civil Code, 4th ed., pp. 268–269; Guevara *vs.* Pascual 12 Phil., 811.) (See contrary opinion in Caridad Estates, Inc., *versus* Santero, 40 Off. Gaz., No. 14, p. 61.) It seems evident, therefore, that, altho the right to resolve reciprocal obligations in case one of the obligors fails to comply with that which is incumbent upon him, is even implied, no person can take justice into his own hands and decide by himself what are his rights in the matter, specially if the debtor does not agree with his points of view and refuses to return the property purchased. In such cases the obligee has to resort to the courts to assert his rights judicially, as prescribed in the third paragraph of Article 1124 of the Civil Code which has reference both to personal as well as to real properties.

3. ID.; ID.; ID.; MORATORIUM; EXECUTIVE ORDERS NOS. 25 AND 32, THEIR EFFECT ON OBLIGATION INCURRED BEFORE THE WAR AND BEFORE PRESIDENTIAL PROCLAMATION THAT A CERTAIN AREA IS FREE FROM ENEMY OCCUPATION AND CONTROL; CASE AT BAR.—The plaintiff's monetary obligation to the defendant having been contracted before the war and before the declaration by presidential proclamation that the area of Sigma, Capiz, had been free from enemy occupation and control, enforcement of plaintiff's indebtedness and obligations to the defendant was by virtue of Executive Order No. 32, amending the provisions of Executive Order No. 25, temporarily suspended.

4. ID.; ID.; ID.; ID.; ID.; OBJECTIVE OF MORATORIUM.—The moratorium, usually proclaimed at times of national emergency, is aimed at ameliorating the penury and financial difficulties of the needy, and that provident measure of good government would be rendered useless and of no actual application to any single

instance if, as declared by the lower court, all reciprocal obligations, unqualifiedly, were to be excluded from the effects of its salutary operation.

APPEAL from a judgment of the Court of First Instance of Capiz. Hernandez, J.

The facts are stated in the opinion of the court.

Benjamin H. Tirol for appellant.
Leon P. Gellada for appellee.

FELIX, *J.:*

Antecedents.—C. N. Hodges was the owner of one-half of lot No. 2359 of the cadastral survey of Sigma, in the Province of Cápiz, of an approximate area of 3,234,654 square meters, covered by original certificate of title No. 7730 of the register of deeds of said province, and assessed at ₱6,000 more or less. On December 11, 1939, said owner sold his property to Edito H. Tirol under the terms and conditions of the corresponding deed of sale executed by the vendor and the vendee (Exhibit A), the pertinent clauses and stipulations of which, that are involved in the present litigation, being as follows:

"1. That the VENDEE agrees to pay the VENDOR upon the signing of this contract the sum of ₱1,000, Philippine currency, and the sum of ₱1,000, Philippine currency, payable every year thereafter, *on or before December* 10 of each year, with the interest at the rate of 1 per cent per month, over the amount remaining unpaid, until the whole sum of the purchase price hereinabove stipulated has been fully paid and satisfied.

"2. That the VENDEE agrees to pay all legal taxes on the property during the term of the contract.

"5. That should the purchaser fail to make any of the yearly payments as herein provided, *within 60 days after it falls due, this contract may be taken and considered as rescinded and annulled* and the said VENDOR shall be at liberty to dispose the said parcel of land to any other person in any manner as if this contract has never been made and entered into, and in the event of such rescission *all sums of money* paid under this contract and *with all improvements thereon* will be considered *and taken as rentals* for the use of said parcel of land, and the VENDEE hereby waives all rights to ask or demand devolution of any amount paid and hereby agrees to peaceably vacate the said parcel of land and with all improvements thereon.

"6. If the VENDEE does not *vacate* the land *after sixty days* but continues occupying same or makes other occupy it, without paying the corresponding installment and interest, and that fact obliges the VENDOR to file against him an action of ejectment or as detainer of land (sec. 80 Act 190) the VENDEE hereby agrees to pay to the VENDOR an additional amount of ₱100 as his attorney's fees besides the payment of all installments and interests due, hereby considered also as rental, up to the time he vacates peaceably the land and delivered in writing to VENDOR.

"7. In case the VENDEE has no means or resources to pay the installments and interests and failed to pay them after six months payments the VENDEE shall lose his right to pay the price by installment and the VENDOR may ask and demand the payment of the total

price in the amount unpaid; in case of judicial demand, he shall pay the same attorney's fees above mentioned."

Immediately after the execution of Exhibit A and of the first payment of ₱1,000 acknowledged by the receipt Exhibit B, also dated December 11, 1939, possession of said property was delivered to the vendee, who through the year 1940 and even up to April 1941 made various improvements on the land that are indicated in the sketches (Exhibits F and F–1) and invested about:

₱1,000 in the construction of a road of about two and a half kilometers in order to make the farm accessible by motor vehicles from the nearest national highway;
₱900 for a camarin including the cost of an oven;
₱5,000 in the acquisition of a sugar mill and the corresponding motor;
₱500 in the purchase of four kettles (cawas);
Also bought various rail trucks (vagonetas) to bring the sugar cane to the mill; and
Increased the cultivated areas of sugar cane which on April, 1941 reached to an extension of about 20 hectares,

to an approximate cost or expenditure of about ₱10,000.

Probably due to these investments, on *December 10*, 1940, when the first installment of ₱1,000 became payable, Edito H. Tirol had no money and could not meet this obligation. Undoubtedly his financial situation compelled him to work for the Bureau of Health and for that purpose about April of 1941 he went to Davao, Mindanao, leaving his brother Amado H. Tirol in charge of his farm at Sigma, Capiz, and his brother Atty. Benjamin H. Tirol to care for his affairs in the City of Iloilo. As Edito H. Tirol did not pay the land tax for the property for the year 1940 as it was his duty so to do according to paragraph 2 of the contract (Exhibit A), on September, 1941, the vendor, C. N. Hodges paid said tax amounting to ₱344.82.

On *December 10, 1941,* or two days after the war in the Pacific broke out, matured the second installment of ₱1,000 and interests which the vendee again failed to pay.

About July, 1942, Edito H. Tirol returned from Mindanao and sometime in 1943 his brother Amado H. Tirol was killed by the Japanese. It seems that during the period of Japanese occupation no benefit was derived from the land by the vendee because the produce was either taken by the "guerrillas" or by the soldiers of the invaders.

In 1945, already after liberation, Amado Jarencio, the person then in charge of the property in question again started the cultivation of the land, but on or about December, 1945, at harvest season, Wilson French arrived there with a note (Exhibit G) from C. N. Hodges addressed to Amado Jarencio which had to be left in the farm because Jarencio was not there at that time. On that occasion Wilson French took from Edito's tenants 104 cavanes of palay which he sold for an alleged price of ₱364 and de-

livered this sum to Mr. Hodges. The note Exhibit G is as follows:

"77 Guanco Street
Iloilo, Dec. 19, 1945

Mr. AMADO JARENCIO
Sigma, Capiz
Dear Sir:

Please be advised to deliver to Mr. Wilson French, the present one third of 1945 crops which has already been harvested as he is the man in charge. We cannot pay you any commission or percentage from the crop. If you wish to continue in the future to occupy some rice field on my property under the same condition as outlined above you may do so with the consent of Mr. Wilson French, otherwise give up and vacate the premises this coming year.

I trust this will meet your approval.

Yours truly,

(Sgd.) C. N. HODGES."

When Jarencio received this note Exhibit G, he turned it over to Atty. Benjamin H. Tirol who, in a letter marked as Exhibit H, dated January 10, 1946, disagreed with the opinion of Mr. Hodges that the contract of sale that the latter signed in favor of Dr. Edito H. Tirol could be cancelled by the vendor at will despite the moratorium orders which were still in force in the Philippines, and protesting against the alleged high-handed and illegal procedure adopted by the vendor's men he announced that Mr. Hodges would receive within a few days the corresponding summons.

The case.—In accordance with the announcement made in Exhibit H, on January 7, 1946, Edito H. Tirol filed in the Court of First Instance of Capiz the complaint that gave rise to the present litigation. The action was instituted against the defendant C. N. Hodges for the purpose of securing judgment:

(*a*) Declaring that the deed of sale between plaintiff and defendant, copied in paragraph 3 of the complaint, was still in full force, the pecuniary liability of the defendant in favor of the plaintiff by virtue of said contract being subject to Executive Orders Nos. 25 and 32 regarding moratorium;

(*b*) Ordering the defendant to desist from taking possession of the land in question and of selling or disposing of the same in favor of third parties;

(*c*) Ordering the defendant to return to the plaintiff said 150 cavanes of palay belonging to the plaintiff, or its price at the rate of ₱15 per cavan, or the sum of ₱2,250; or at least that said lump sum of ₱2,250 be credited to the plaintiff as part of the purchase price of the land in question; and

(*d*) Condemning the defendant to pay the costs.

Plaintiff also prayed for such other remedy that in justice and equity may proceed.

On January 19, 1946, defendant filed his original answer (Exhibit I), which was amended on February 15, 1946. In this amended answer defendant prayed that the complaint of the plaintiff be dismissed with costs against

him, and by reason of the amended counterclaim, based on two causes of action, he further prayed,

For the first cause of action:

(1) That the contract Annex A be upheld and declared rescinded and annulled as if it had never been made and entered into;

(2) That plaintiff be ordered to pay the costs of the suit; and

For the second cause of action:

(1) That plaintiff Edito H. Tirol be ordered to return or surrender the possession of the one half of the parcel of land known as Lot No. 2359 of the Cadastral Survey of Sigma, Capiz, together with all its existing improvements to C. N. Hodges;

(2) That Edito H. Tirol be ordered to deliver the 816 cavanes of palay in legal measurement, corresponding to the products of Lot No. 2359 from December 10, 1940 up to the present, or its equivalent in legal tender at the rate of ₱7.50 per cavan;

(3) To pay the sum of ₱100 as attorney's fees;

(4) To pay the costs of this suit; and

(5) For any other remedy that law and equity demand.

After proper proceedings and hearing, on September 16, 1946, the Court of First Instance of Capiz rendered judgment:

"Declaring contract Exhibit A, signed by the parties on December 11, 1939, to be resolved; ordering the plaintiff to deliver the possession of the land in question with the improvements actually existing thereon to the defendant, and sentencing the plaintiff to pay the costs.

For lack of merits the defendant's counter-claim is dismissed with regard to the damage claimed in the second cause of action."

From this decision plaintiff appealed and in this instance his counsel maintains that the lower court erred:

(1) In declaring that defendant C. H. Hodges has not granted the plaintiff an indefinite extension for paying the first and second annuities provided in the contract of sale Exhibit A, the first one expiring on December 10, 1940, and the second on December 10, 1941;

(2) In declaring that on November, 1941, defendant Hodges chose to resolve the contract of sale and that he duly notified the plaintiff of such resolution;

(3) In not declaring as proven that the idea of revoking the resolution of the contract of sale was only thought of by defendant Hodges, after liberation, in his desire of availing himself of the unusual increase in the price of the lands in order to profit by the sale of the land in question to other persons;

(4) In holding that the contract of sale Exhibit A could be resolved by a mere failure in the payment of the annuities due and without previous notice to plaintiff of such resolution;

(5) In declaring applicable to the present case the decision of the Supreme Court in Caridad Estate, Inc., *versus* Pablo Santero, 40 O. G. p. 61;

(6) In declaring inapplicable to the present case the moratorium provided in Executive Order No. 25 as amended by Executive Order No. 32; and

(7) In dismissing plaintiff's complaint instead of deciding that by virtue of the moratorium defendant cannot now choose to resolve the contract of sale for non-payment of the annuities due; and, therefore, that said contract of sale is until now in force.

The Issues.—From the respective allegations made in the pleadings and the evidence produced by the parties, the questions at issue submitted to this Court for determination may be brought down to the following propositions:

I. Has the defendant granted the plaintiff an indefinite extension, or at least, tolerated or acquiesced to the running of the period for paying the first and second annuities until after December 11, 1941, provided the plaintiff would pay the corresponding interests due, and, as a corollary, had the defendant properly notified the plaintiff of his decision of rescinding and resolving the deed of sale Exhibit A?

II. Has the alleged rescission and resolution of said contract of sale, claimed by the defendant, been legally made?

III. What are the respective rights of the parties to said deed of sale under the facts and circumstances shown in the case and the provisions of Executive Orders Nos. 25 and 32, series of 1944 and 1945, respectively, on moratorium?

Discussion of the Controversy:

1. The facts given in the narration of the antecedents of this case are not in dispute. The controversy between the parties begins with the conflict relative to the appreciation and value of the evidence they produced in support of their respective contentions on the points involved in the first question at issue. We gather from the record that soon after the execution of Exhibit A, Dr. Edito H. Tirol started to invest money in the improvement of the farm bought by him in Sigma, and his calculations must have failed him because when the first installment became due, he was not able to pay the same. In fact his financial situation made him accept a job in the Bureau of Health in Davao, Mindanao, where he went on or about April of 1941, leaving his *hacienda* in charge of his brother Amado H. Tirol.

According to the theory of the plaintiff, on or about December of 1940, and because he had no money available for the payment of the first annuity that was to become due, he went, accompanied by his brother Atty. Benjamin H. Tirol to the office of the defendant in Iloilo to ask for an extension for the satisfaction of the first installment of ₱1,000 and interests payable on December 10, 1940, but the defendant was not there, for he was in jail on a case of usury, and they had to talk to Mrs. Hodges who was left in charge of the business of her husband. Mrs. Hodges was inclined favorably to the petition for extension, but stated that she was to report the matter to her husband whom she expected to be in his office by March of 1941. In view of the encouraging statements of Mrs. Hodges, Amado H. Tirol continued his works in the land and in the sugar mill with the result that during April and May of 1941 the crop of 10 hectares of sugar cane was milled, while the cultivation of 20 hectares of sugar cane was being undertaken.

On May of 1941, Attorney Tirol went to the office of the defendant in Iloilo to secure from him a deferment of the payment of the installment and interests due since December 10 of the preceding year, and he positively testified that the defendant yielded to his request on condition that the interests on the amount due be paid then; that to comply with this requirement he instructed his brother Amado to pay the same and that on July of 1941 Amado in his presence paid said interests to the defendant who received the amount and issued the corresponding receipt therefor; that this receipt, however, could not be produced at the hearing because all the papers of the *hacienda* in the possession of Amado, who was killed by the Japanese, were either destroyed or disappeared; and, finally, that after the satisfaction of said interests, he wrote to his brother Edito a letter, copy of which was marked as Exhibit E, wherein he stated that Amado and his wife had just paid *part of the interests* to Hodges who consented to wait until the application for a loan made by said spouses be acted upon by the bank, to which letter plaintiff answered stating that he was glad to learn that Amado *had paid something* to Hodges and that the latter had consented to wait in the meanwhile. (Exhibits D and D–1.–Note: Exhibit D–1 is the envelope of the letter Exhibit D which was presented to show by the post mark that really there was a letter addressed to Atty. Benjamin H. Tirol, Calle Iznart, Iloilo City, Iloilo, sent in the latter part of July of 1941 from Santa Cruz, Davao, where the plaintiff was residing at the time).

In connection with the loan that Amado and his wife were to secure from the bank, Attorney Tirol further testified that sometime after the payment of said interests to the defendant, he went to see Hodges to ask for a separate title of the land, but the latter said that he had paid his surveyor, Mr. Navarro, to make a new plan, which was not yet ready, in order to obtain a separate title of the land; that defendant then showed him a sketch in Manila paper allegedly submitted by Navarro, and suggested that if the Tirols were interested in having a separate title, they should look for a surveyor to make a subdivision plan; and that heeding to defendant's suggestion they contracted the services of Messrs. Gavino and Arches to make the survey, using the data furnished by the defendant who said that the subdivision had to be adjusted to the decision rendered by the Court of First Instance of Capiz in the case he had against the Recio brothers.

The evidence for the plaintiff further tends to show that on September 4, 1941, defendant called Attorney Tirol in his office over the telephone to inform him that his brother had not paid the land tax, that he (Hodges) had to pay it, and that his brother should be instructed

to immediately pay the amount of said tax. This caused Attorney Tirol to write a letter to his brother Amado on September 29, 1941, a copy of which has been marked as Exhibit E, requesting him to pay Hodges the amount of ₱344.82 that the latter paid as land tax for the land. Despite such letter, it seems that the Tirols had not paid up to the present this amount to the defendant.

Still later, that is, on January of 1942, already after the war in the Pacific had broken out, Attorney Tirol says that he met the defendant in the street on his way home and gave him a lift, and that in the conversation that ensued while in the automobile and speaking of the land in question the defendant remarked that "This is war time, forget about money."

Of course the defendant denies having ever granted or consented to give the plaintiff any extension for the payment of the annuities and interests due, and as a reason for his attitude he testified that he could not do otherwise because by that time he had to pay his debt with the Bank of the Philippine Islands amounting to ₱95,000, for which the bank made him deposit ₱33,000 on his return from America after liberation. His version in this regard is to the effect that he was put in jail for usury, and being sore about it, around the month of April or May of 1941 he went three times to see Attorney Tirol in his office to inform the latter that if the plaintiff did not come across and they did not pay the whole amount payable on account of the transaction, he would get the land which they were using without any return to the defendant; that Attorney Tirol answered that his brother was in Mindanao; that on November 19, 1941, he (Hodges) caused Atty. León P. Gellada to write a letter to Dr. Edito H. Tirol informing the latter that because he had failed to live up to the agreement contained in the document dated December 11, 1939, the defendant, pursuant to paragraph 5 of Exhibit A, had elected to resolve said contract as if it had never been made and entered into, and demanded that plaintiff peaceably vacate the land as soon as possible to avoid unnecessary court litigation (Exhibit 4). This letter, however, was addressed and said to have been sent to Sigma, Cápiz, though the defendant knew that the plaintiff was in Mindanao, and, naturally, plaintiff strongly avers that he had not received such notice, and that Exhibit 4 is only a self-serving evidence thought of at the eleventh hour.

On the part of the defendant there was no express denial about the alleged telephone conversation had between him and Attorney Tirol on September of 1941 regarding the former's demand that he be paid the sum of ₱344.82 that he had advanced for the land tax of the *hacienda,* nor of the conversation in January of 1942 when, according to Attorney Tirol, defendant was given a lift and Hodges

said: "This is wartime, forget about money," undoubtedly referring to Edito H. Tirol's debt on account of his purchase of the property mentioned in Exhibit A.

With regard to the cavanes of palay that were taken from the *hacienda,* defendant admitted that about the end of 1945 his agent Wilson French got 104 cavanes of palay from plaintiff's tenants, and received on that account the sum of ₱364.

After carefully considering the circumstances of the case and weighing the probatory value of the evidence produced by the parties, we are more inclined to believe that albeit defendant might have not expressly granted any deferment in the payment of the annuities and interests due *before the war broke out,* yet, his attitude implied, at least, a sort of reluctant tolerance. It is not conceivable that plaintiff would continue enlarging the cultivated area of sugar cane, which entailed more expenses, and, that defendant would demand on September of 1941 the reimbursement of the land tax advanced by him, if there was no understanding, express or implied, that defendant would refrain from exercising the rights he had under the leonine terms of Exhibit A. Anyway, until December 8, 1941, when the war broke out, he had not *properly* notified the plaintiff of his decision of rescinding and resolving said contract of sale (Exhibit A), as undoubtedly he could have done if he really was determined to take such action.

II. The terms and conditions of Exhibit A are no doubt very tight and impervious for the plaintiff, but it was the latter's business to accept them or not, and, once accepted, to abide by the natural and expected consequences thereof. Among said conditions were those contained in paragraph 5:

"That should the purchaser fail to make any of the yearly payments as herein provided within sixty days after it falls due, this contract may be taken and considered as rescinded and annulled and said vendor shall be at liberty to dispose of the said parcel to any other person in any manner as if this contract had never been made and entered into, and in the event of such rescission all sums of money paid under this contract and with all improvements thereon are hereby considered and taken as rentals for the use of said parcel of land, and the vendee hereby waives all rights to ask or demand the devolution of any amount paid and hereby agrees to peaceably vacate the said parcel of land with all improvements thereon."

Similar conditions to these have already been judicially declared as valid and within the powers of the parties to stipulate (Escueta *versus* Pando, 42 Off. Gaz., No. 11, pp. 2759, 2762–2763; Flores *versus* Jurado, CA–G. R. No. 11–R, Feb. 21, 1947; Risma *versus* Arcega et. al., CA–G. R. No. 901–R, June 17, 1948), but the question we have to pass upon is whether defendant herein legally exercised his right to rescind the contract and take back the land with all the improvements plaintiff made thereon. As correctly stated by appellant, there is no existing provision

in our laws authorizing the *automatic rescission* of contracts for non-payment of the purchase price. Before the rescission of a contract of sale may take place, it is undoubtedly necessary that the vendor definitely choose in a manner not subject to doubt, the remedy he intends or desires to invoke, and that he notify the vendee of his determination by duly and authentic means. Our Civil Code provides:

"ART. 1504.—In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place *ipso facto*, the vendee may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time."

The lower court citing the doctrine in the case of Caridad Estates, Inc. *versus* Santero (40 O. G. No. 14, p. 61) wherein it was held:

"That the contract Exhibit A is a sale in installment in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill his obligation. *There is, consequently, no occasion for the application of the requirements of Article 1504.*",

declared that, in its opinion, the purchaser may make the payment before the demand is made as provided in said article 1504, but this does not mean that the vendor cannot choose to rescind the contract without such demand. Contrary to this opinion we maintain that although the parties to a contract may lay down the procedure to be followed in a given case, it must be presumed that that is so when such procedure does not go against the express provisions of the law which the will of the parties cannot overcome. Article 1124 of the Civil Code reads as follows:

"ART. 1124.—The right to resolve reciprocal obligations, in case one of the obligors should fail to comply with that which is incumbent upon him, is deemed to be implied.

The person prejudiced may choose between exacting the fulfillment of the obligation or its resolution with indemnity for losses and payment of interest in either case. He may also demand the resolution of the obligation even after having elected its fulfillment, should the latter be found impossible.

The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation.

This is understood to be without prejudice to any rights acquired by third parties in accordance with articles 1295 and 1298 and with the provisions of the Mortgage Law."

Commenting on these legal provisions, Manresa has the following to say:

"In reciprocal obligations the right to resolve them is understood to be implied, it being at the option of the person prejudiced to elect between the performance of the obligation and its resolution (art. 1124); *but, this doctrine, applied to purchase and sale, or more particularly to the non-payment of the price of real estates, finds a*

special modification, not only where the parties, without altering that situation by virtue of their covenants, may have it assumed, *but also in that other case in which the parties carrying the same to its ultimate consequences, may have provided that non-payment of the price at the time stipulated shall cause the resolution of the sale, which is konwn as Pactum Commissorium.*

Article 1124 gives the court the power to allow a term to the debtor, but, in the end, this is nothing more than a power that the courts may use when they believe that there are justifiable grounds therefor. *But even in case the Pactum Commissorium shall have been stipulated, article 1504 imposes in every case upon the vendor, the obligation of making demand on the purchaser, either judicially or by notarial act as a means of carrying out said resolution, because the purchaser is entitled to pay even after the expiration of the period and until demand upon him is made.*

The transcendental importance that the Code assigns to such requirement may thus be inferred. The lack of payment of the price at the time stipulated is not, in truth and in fact, what at first sight might be thought of, the negative act which determines the fulfillment of the condition, which is the essential foundation of the *pactum commissorium* inasmuch as that act alone does not produce all the effects intended by the parties. *Such act has to be accompanied by demand, so that, in reality the condition is double and joint, because jointly must concur both the negative act of non-payment by the purchaser and the positive act of demand by the* vendor.

The demand has in addition another meaning which shall not be forgotten. *It is the declaration of the will of the vendor, expressed in authentic or indubitable form, by which his purpose to elect for the resolution of the sale is evidenced.* If the purchaser fails to make payment, the vendor has *two causes* to follow: one is to demand the performance of the contract; the other is to demand its resolution. For the first, he does not need to execute the previous act of demand, it being enough for him to exert his right before the court; *For the second, it is indispensable that he show ostensibly his purpose of resolving the obligation.*" (10 Manresa—Código Civil, 4th ed. pp. 268–269.)

In the case of Guevara *vs.* Pascual, 12 Phil., 811, the Supreme Court also held:

"The mere failure to make payments did not rescind the contract, *as it was necessary that the owner take some affirmative action to indicate his intention to rescind.*"

From the preceding considerations, it seems evident that, albeit the right to resolve reciprocal obligations in case one of the obligors fails to comply with that which is incumbent upon him, is even implied, no person can take justice into his own hands and decide by himself what are his rights in the matter, specially if the debtor does not agree with his points of view and refuses to return the property purchased. In such cases the obligee has to resort to the courts to assert his rights judicially, as prescribed in the third paragraph of Article 1124 of the Civil Code. Appellee's counsel, however, contends, that this article only "refers to personal properties and not to real properties", but nowhere in said Article 1124 is said anything restraining its application to personal properties. On the contrary, the reference made in the last paragraph to the provisions of the (Spanish) Mort-

gage Law makes it clear that said article covers all reciprocal obligations affecting both personal and real properties.

Until now the plaintiff is in actual possession of the *hacienda* involved in the present litigation, and up to commencement of the last war in the Pacific and even up to the time of enactment of Executive Order No. 32 (March 10, 1945), the defendant C. N. Hodges had not made upon the plaintiff the demand prescribed in Article 1504 of the Civil Code, nor given him notice of defendant's determination of rescinding the contract Exhibit A; at least the evidence submitted by the defendant has not established his contention with such preponderance as to warrant and justify us to declare that contract of sale Exhibit A has been legally rescinded and annulled as if said contract had never been entered into.

III. If our finding is that defendant had not rescinded and resolved the contract of sale Exhibit A, before March 10, 1945, and failed to notify the plaintiff before this date of his determination to attain that end, and to demand Dr. Edito H. Tirol to vacate the premises, or in other words, if the alleged rescission and resolution of said contract of sale was not timely and legally made, what are the respective rights of the parties to said deed of sale under the facts and circumstances on record and the provisions of Executive Orders Nos. 25 and 32 on moratorium?

There is no question that plaintiff's monetary obligation to the defendant had been contracted before the war and before the declaration by presidential proclamation that the area of Sigma, Cápiz, had been free from enemy occupation and control, and this being the case, enforcement of plaintiff's indebtedness and obligations to the defendant was by virtue of Executive Order No. 32, amending the provisions of Executive Order No. 25, temporarily suspended pending action by the Commonwealth Government. The lower court ruled that this Executive Order is not applicable to contracts involving reciprocal obligations, and expressed the opinion that in the case at bar it would not be just and equitable for the plaintiff to continue occupying the land for an indefinite period without being at the same time obliged to pay a cent to the defendant during the existence of the moratorium. We might agree with such view of the trial judge if applied to cases of reciprocal obligations that are to be performed almost simultaneously, like, for example, in cases of cash purchases wherein the vendor is bound to deliver the thing sold to the vendee upon payment by the latter of the price thereof. But the principle cannot be the same in cases like the one at bar, where one of the parties, by an act of his own free will, consents and agrees to defer the complete performance of the obligation of the other party until some years thereafter, for it may happen, as

it did happen, that circumstances beyond the control of the obligor, like war or other public calamities, that he could not forsee, might deprive him of the means to fulfill his obligations, and certainly it would not be inequitable or unjust to suspend temporarily the enforcement of a duty when the immediate, prompt and complete execution of which the very obligee had no pressing need to require at the time the obligation was contracted. The moratorium, usually proclaimed at times of national emergency, is aimed at ameliorating the penury and financial difficulties of the needy, and that provident measure of good government would be rendered useless and of no actual application to any single instance if, as declared by the lower court, all reciprocal obligations, unqualifiedly, were to be excluded from the effects of its salutary operation.

After a careful examination of the evidence on record we find that plaintiff is indebted to the defendant in the following amounts:

For the unpaid balance of the purchase price of the land—₱5,469.32 plus interests at the rate of 12 per cent per annum on said amount from December 10, 1940, until its payment in full.

For the land taxes of the property paid by the defendant in September of 1940—₱344.82.

The amount of ₱104.58 mentioned in Exhibit 7 as representing the land tax paid by defendant on May 29, 1946, is *not* credited to him because the official receipt issued by the Provincial Treasurer of Iloilo cannot be for the land tax of a estate situated in Sigma, Capiz.

From the amount of defendant's credit shall be deducted the sum of ₱780 plus legal interest from January 7, 1946, the date of the filing of plaintiff's complaint. This amount of ₱780 represents the value of 104 cavanes of palay at the rate of ₱7.50 per cavan which were taken by Wilson French from plaintiff's tenants.

The alleged interests paid on September 1941 to the defendant are not charged against him because the actual amount paid is not determined.

Wherefore, the decision appealed from is hereby reversed and another rendered condemning the plaintiff to pay to the defendant, within 30 days after this decision becomes final or within 30 days after the lifting of the moratorium, the sum of ₱5,814.14 plus interests at the rate of 12 per cent per annum on the amount of ₱5,469.32 from December 10, 1940 until its payment in full, *less* the sum of ₱780 plus legal interest from January 7, 1946. Pursuant to the terms and conditions of Exhibit A and the provisions of article 1124 and 1504 of the Civil Code, if plaintiff shall fail to pay in full his indebtedness to the defendant within the period he has to do so, then the deed of sale Exhibit A shall be declared rescinded and annulled as if it had never been made and entered into, and in that case the plaintiff shall immediately surrender the possession

of half of the parcel of land known as lot No. 2359 of the Cadastral Survey of Sigma, Capiz, together with all its existing improvements to defendant C. N. Hodges. Should the plaintiff satisfy his indebtedness to the plaintiff within the time granted to him in this decision, then said deed of sale Exhibit A shall be considered as operative and not rescinded or resolved up to the present, and, consequently, in that case the defendant shall be ordered to desist from taking possession of the land in question and of selling or disposing of the same in favor of third parties, and he shall execute in favor of plaintiff the corresponding deed of conveyance of said property in form sufficient in law to that purpose. In any case the defendant's counterclaim with regard to damages demanded in the second cause of action is hereby dismissed for lack of merit. Without pronouncement as to costs. So it is ordered.

Torres and *Endencia, JJ.*, concur.

Judgement reversed.

[No. 1393—R. July 12, 1948]

PABLO ZARA and MARIA MEDRANO, plaintiffs and appellees, *vs.* FORTUNATO AMARANTE, defendant and appellant

1. PLEADING AND PRACTICE; AMENDED ANSWER; ORIGINAL ANSWER, ASSERTIONS THEREIN MAY BE TAKEN INTO CONSIDERATION BY COURT.—The contention that the trial court erred in basing its conclusions on a fact set forth in the original answer which had been suppressed by the filing of the amended answer is untenable. Laying aside technicality, the trial court may take into consideration the assertions of the appellant in the original answer, to show inconsistent positions and lack of proper orientation of the appellant and to convince itself, in view of all the pleadings, that the evidence militates in favor of the appellees.
2. OBLIGATIONS AND CONTRACTS; SUBJECT-MATTER OF CONTRACTS; TERM "DETERMINATE" CONSTRUED.—Lexicographers give the equivalent of *determinate* as having definite limits; not uncertain or arbitrary; established; definite. Manresa commented: "Es decir, que no es necesario que la cosa *esté actualmente determinado, basta con que sea determinable en el momento del contrato,* en el momento en que se consentía." (10 Manresa, Código Civil Español, 26–27.) The conclusion of the trial court on this point is supported by law and the evidence of record. The subject-matter of the present sale is a parcel of land containing 18 hectares, at *sitio* Panique, Rosario, Batangas. It was, therefore, determinable, because it was in existence, certain and the place it is located was indicated in the contract Exhibit A. By its segregation, effected by the appellant himself who placed visible signs and landmarks, such as stakes (estacas de madre de cacao), and by the delivery by him of the possession thereof to the appellees, it became clearly determinate. Considering Exhibit A even in the light merely of a perfected contract, it now creates a right to compel the performance of its terms and, consequently, obligates the appellant to execute the deed of sale. (Article 1279, Civil Code.) The circumstance that the appellee and his

family after "recapacitating" found out that they sold an extensive portion of their land, is not a valid cause to back out from the contract. Agreement to purchase a certain specified lot of land with certain specific price is obligatory and enforceable regardless of the fact that its area is less than that specified in the contract. (Goyena *vs.* Tambunting, 1 Phil., 490.) The mere fact that the bargain may appear hard on the appellees, is not sufficient ground for the cancellation of the contract. (Askey *vs.* Cosalan, 46 Phil., 179.)

APPEAL from a judgment of the Court of First Instance of Batangas. Santos, J.

The facts are stated in the opinion of the court.

Vicente Reyes Villavicencio for appellant.
Nicanor G. Gutierrez for appellees.

PAREDES, *J.:*

The plaintiffs brought this action to compel the defendant to execute a deed of absolute sale in their favor over a parcel of land described in the complaint and to pay damages in the sum of ₱1,000. Answering, the defendant made specific denials and admissions and filed a cross-complaint, asking for the resolution of the sale and claiming damages in the sum of ₱500. The trial court rendered judgment "ordenando al demandado a que otorgue la correspondiente escritura de la venta ante un notario público del terreno descrito en la demanda, a favor de los demandantes, por la suma ya pagada de ₱7,200 dentro del plazo de diez días desde que esta decisión quede firme, sin especial pronunciamiento en cuanto a costas." Upon appeal to this Court, the appellant alleges that the trial court erred (1) "al ordenar al demandado otorgase el documento de venta del terreno descrito en la demanda"; (2) "al no declarar que la porción de terreno de 18 hectáreas que el demandado vendía a los demandantes se halla en el lado este de su terreno de mayor extensión y no al suroeste"; (3) "al no declarar ineficaz y nulo el documento de venta, Exhíbit A por falta de objeto cierto"; (4) "al basar en una de sus conclusiones de su decisión sobre un hecho alegado en su contestación original que fue suprimida mediante la presentación de una contestación enmendada."

On August 12, 1944, the defendant offered to sell the plaintiffs a piece of land consisting of 18 hectares from a bigger parcel of land, in the sitio of Panique, barrio of Tulos, of the municipality of Rosario, Batangas, for the sum of ₱7,200 which was paid in the act by the plaintiffs to the defendant who executed Exhibit A, in Tagalog, which, translated into Spanish, runs as follows:

"Recibi la cantidad de siete mil doscientos pesos (₱7,200) en moneda hoy corriente como precio del terreno que yo vendo a los esposos Pablo Zara y María Medrano, que tan pronto fuera medido el expresado terreno que yo vendo a ellos, otorgare la escritura de venta absoluta.

"Este terreno, según nuestro convenio, tiene una extensión de 18 hectáreas situado en el barrio de Tulos, Rosario, Batangas, sitio de Paniqui.

"En testimonio de lo cual, yo firmó en Rosario, Batangas, hoy a 12 de agosto de 1944.

"(Fdo.) FORTUNATO AMARANTE

"En presencia de los testigos:

(Fdo.) CONSTANCIA AMARANTE
FRANCISCO CARREON

"Hemos convenido igualmente que el terreno que sea comprendido, la mitad de su cosecha de palay y maiz se repartirá por mitad entre nosotros, incluyendo tambien el 'balatong.' Este será efectivo solamente dentro de este año.

"(Fdo.) FORTUNATO AMARANTE
PABLO ZARA

"Testigos:

"(Fdo.) CONSTANCIA AMARANTE
FRANCISCO CARREON.

Pursuant to this agreement, two days after its execution, on August 14, 1944, the parties went to the land and measured the portion object of the sale, having been present during the survey, among others, Francisco Carreon, the notary public, who prepared Exhibit A, and Pedro Zara, son-in-law of the defendant. On that occasion, a portion of 18 hectares on the southwest side of the bigger parcel of land, was measured and segregated, upon indication of the defendant himself, who gave the visible boundaries and landmarks during the survey. That portion which is the one described in the complaint, was delivered then and there by the defendant to the plaintiffs who took possession of the same, and built thereon a house wherein they have been living up to the present, and planted therein palay and corn. In compliance with the terms of the agreement, one half of the harvest of palay and corn during the year 1944 was delivered to the defendant, with the exception of the produce of the land tilled by one Elias Macalalad to whom the said land was mortgaged then. Notwithstanding the repeated demands made by the plaintiffs upon the defendant to execute the corresponding deed of absolute sale of the land in question, and despite the survey and the segregation of the land bought, the latter refused to comply with said demands. These facts are fully established by Exhibit A and the testimony of the plaintiff Pablo Zara and his witnesses Francisco Carreon and Pedro Mendoza.

The defendant denied having helped in the survey of the land. He alleged that when he went to the land, accompanied by his daughter Constancia Amarante and his son-in-law Pablo Zara, on the day agreed upon by the parties to survey the land sold, he found the plaintiffs and his companions there, already measuring a portion on the southwestern side of the bigger part of his land which was not the portion agreed upon; that he opposed

the further measurement of that side, because what he sold was on the east side, but plaintiff Pablo Zara insisted and angrily threatened the defendant, by saying that if he insisted in suspending the survey, something serious would happen to him and he would be shot (algo serio le pasaría y que le daría un tiro) with a pistol which he carried, as said plaintiff was then a policeman. Noticing the attitude of the plaintiff, defendant returned to the town with his companions. He finally alleged that he did not deliver the possession of the land in question to the plaintiffs.

The following are the important questions to be discussed in the proper determination of this case:

(*a*) What side of the appellant's land should the portion of 18 hectares be segregated from. The plaintiffs contend that the portion on the southwest side of the bigger parcel of land had been indicated by the appellant himself; whereas the appellant claims that he indicated the east side;

(*b*) Whether the land in question had been surveyed by appellees, through force and intimidation. While the appellees allege that the land under litigation was measured with the concurrence and conformity of the appellant, the latter claims that the appellees surveyed it by employing threats;

(*c*) Whether the appellant delivered the possession of the land to the appellees. The latter contend that possession thereof was given voluntarily; whereas the appellant avers that the appellees occupied it illegally and against his will.

After hearing the evidence, the trial court "ha llegado a la conclusión de que lo preponderancia de las mimas milita en favor de los demandantes." We are not prepared to alter this conclusion of the trial court, not only because he had the opportunity to observe the conduct and demeanor of the witnesses, but also because the evidence of record supports said conclusion.

There is no question that the appellant sold to the appellees a parcel of land, with an area of 18 hectares, at sitio Panique, barrio of Tulos, Rosario, Batangas. The genuineness and due execution of Exhibit A was not denied in the answer. The fact of sale is even admitted by the appellant; in effect he is willing to execute a deed of sale of the land sold in Exhibit A, provided it is on the eastern side of his bigger parcel of land, and it first be measured by a surveyor. Appellant's counsel alleges that the appellees had not complied with the terms of the said agreement Exhibit A, because no survey had been made of the land to be segregated. Counsel takes advantage of the testimony of Carreon who stated that the measurement of the land was made before the execution of

Exhibit A. After a careful perusal of Carreon's testimony, however, we conclude that he was rather confused as to the date of the survey or that he turned hostile to the appellees who presented him as a witness; and this must have been the reason the attorney for the appellees was granted permission, upon his own request, to propound leading questions to the said witness. Pressed to state definitely how many times he went to the land for the purpose of surveying it and on what dates, Carreon declared that he had been there to survey only once and did not remember very well on what date of August they made the survey. There is no doubt in the mind of the court that the survey was made only once, and that was after the execution of Exhibit A. Appellee Pablo Zara and witness Pedro Mendoza positively declared that the survey took place a few days after the execution of Exhibit A. The appellant himself testified as follows:

"P. Después de extender el recibo Exhíbito A por usted, había alguna inteligencia con Pablo Zara en que parte de su terreno le vendería?—R. Sí, señor.

"P. Cuando se iba a medir el terreno?—R. Nuestra inteligencia consistía *en que tres días después del otorgamiento del Exhíbito A nos encontraremos en nuestro terreno para medirlo.*

"P. Y usted se fué allí?—R. Sí, señor, me fuí.

"P. Quien era su compañero?—R. Me fuí con mi hija Constancia Amarante y Pedro Zara.

"P. A que hora llegaron ustedes en ese terreno de usted?—R. Mediodía.

"P. Quien encontró usted allí?—R. Les vi que estaban midiendo el terreno por lo que les pregunté, 'porque lo miden aquello no siendo la parte que iba a vender?' Entonces les suspendí la medición." (Testimony of defendant Amarante, t. s. n., p. 42.)

And appellant and his witnesses never mentioned in the course of their testimony of any other trip to the land except the one made after the execution of the agreement Exhibit A.

It is contended that the survey of the land in question and the possession by the appellees thereof were effected through threat and intimidation. Appellee Pablo Zara denied having had any pistol at the time and having been a policeman during the Japanese occupation. If appellant had been threatened to part away with the property he valued so much, he would have reported the matter to the duly constituted authorities upon his return to the *población* that afternoon after the survey. The supposed threat was mentioned for the first time in the course of the testimony of the appellant and of his daughter Constancia during the trial. This alleged threat was not mentioned at all in the original answer. Carreon who was present during the survey did not say anything about the threat. It is, therefore, safe to conclude that there was no intimidation employed in the survey of the land; and if the appellees did not execute the deed of sale, it was due to

the fact, as testified to by Carreon, that appellant and his family thought the land measured was bigger than 18 hectares. The appellant had also voluntarily delivered the possession of the land claimed. Aside from the testimony of the witnesses for the appellees, Exhibit A also confirms this fact when the parties agreed that "la mitad de su cosecha de palay y maiz se repartirá por mitad entre nosotros, incluyendo también el 'balatong'." The fact that from August, 1944 until February, 1945, when this action was instituted, the appellant had not said anything about the land or tried to recover the possession thereof, further strengthens appellees' contention. Had the appellees entered the land by stealth or by force, they would not and could not have constructed thereon a house which they have been occupying until the present. It should also be observed that in the original answer of the appellant, it is alleged that "el demandado en consideración a la cantidad de dinero previamente recibido, *permitió en el entretanto a dichos demandantes, que pudieran trabajar provisionalmente una porción del expresado terreno* en su lado oeste," which is completely contrary to appellant's contention that the land was illegally occupied by the appellees and against his will. In the fourth assignment of error, appellant alleges that the trial court erred in basing his conclusions on a fact set forth in the original answer which had been suppressed by the filing of the amended answer. Laying aside technicality, it is believed that the trial court may take into consideration the assertions of the appellant in the original answer, to show inconsistent positions and lack of proper orientation of the appellant and to convince itself, in view of all the pleadings, that the evidence militates in favor of the appellees.

It is finally argued that "en vista de estas pruebas contradictorias, sobre a que lado del terreno del demandado, si en el suroeste, como pretenden los demandantes, o en el este, como sostiene el demandado, se segregarían las citadas 18 hectáreas, ha hecho que en contrato de venta Exhíbito A, crezca de objeto cierto, sea ineficáz y nulo en derecho, con arreglo al párrafo 2 del artículo 1261 del Código Civil, a menos que se celebre nuevo contrato sobre la citada cuestión." The trial judge declared that "la cosa objeto de aquella venta ya era, por lo menos, *determinable,* y por tanto, a los efectos de la ley, era suficiente para la perfección del contrato celebrado entre ambos. *Determinable* que era entonces la cosa objeto de aquel contrato, se convirtió plenamente en cosa *determinada* después de medida la porción de 18 hectáreas que se describe en la demanda, y segregada la misma de la gran masa de terreno del demandado." Article 1273, Civil Code, provides:

"The subject-matter of every contract must be a thing determinate with respect to its kind. * * *."

Article 1445, Civil Code, says:

"By the contract of purchase and sale one of the contracting parties binds himself to deliver a *determinate thing* and the other to pay a certain price therefor in money or in something representing the same."

Article 1450, Civil Code, recites:

"The sale shall be perfected between vendor and vendee and shall be binding on both of them if they have *agreed upon the thing* which is the subject-matter of the contract and upon the price, even if neither has been delivered."

Lexicographers give the equivalent of *determinate* as having definite limits; not uncertain or arbitrary; established; definite. Manresa commented: "Es decir, que no es necesario que la cosa *esté actualmente determinado, basta con que sea determinable en el momento del contrato,* en el momento en que se consentía." (10 Manreza, Código Civil Español, 26–27.) The conclusion of the trial court on this point is supported by law and the evidence of record. The subject-matter of the present sale is a parcel of land containing 18 hectares, at sitio Panique, Rosario, Batangas. It was, therefore, determinable, because it was in existence, certain and the place it is located was indicated in the contract Exhibit A. By its segregation, effected by the appellant himself who placed visible signs and landmarks, such as (estacas de madre de cacao), and by the delivery by him of the possession thereof to the appellees, it became clearly determinate. Considering Exhibit A even in the light merely of a perfected contract, it now creates a right to compel the performance of its terms and, consequently, obligates the appellant to execute the deed of sale. (Article 1279, Civil Code.) The circumstance that the appellee and his family after "recapacitating" found out that they sold an extensive portion of their land, is not a valid cause to back out from the contract. Agreement to purchase a certain specified lot of land with certain specific price is obligatory and enforceable regardless of the fact that its area is less than that specified in the contract. (Goyena *vs.* Tambunting, 1 Phil., 490.) The mere fact that the bargain may appear hard on the appellees, is not sufficient ground for the cancellation of the contract. (Askay *vs.* Cosalan, 46 Phil., 179.)

The insinuation of the appellant to return the sum of ₱7,200 in its present currency value is beside the question, because the rescission of the contract is not justified, and because the appellant must have profitted from this consideration, especially during the time of emergency.

Inasmuch as the records show that the land was sold at ₱400 per hectare, and that appellant's refusal to execute the deed of sale was due to his supposition that the portion indicated by him exceeded 18 hectares, although no evidence was adduced to show the alleged excess, in

justice to the said appellant, the Court reserves to him the right to avail himself of the pertinent provisions of law on the matter.

The appellees failed to prove their claim for damages in the sum of ₱1,000.

The judgment appealed from is affirmed in toto. So ordered.

Labrador and *Abad Santos, JJ.*, concur.

Judgment affirmed.

[No. 2095-R. July 14, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* SALAHI SAHI, defendant and appellant

1. EVIDENCE; MOTIVE, PROOF OF, NOT INDISPENSABLE; ESTABLISHED DOCTRINE.—It is well established doctrine in this jurisdiction that where admission or credible direct evidence shows that a killing has been committed, proof of motive is not indispensable (People *vs.* Ragsac, 6 Phil., 146; People *vs.* Ramponit, 62 Phil., 284; People *vs.* Buyco, GR L—539 [SC], January 27, 1948).
2. ID.; EXTRAJUDICIAL ADMISSION NOT SWORN TO; ADMISSIBILITY.—The mere fact that the appellant's extrajudicial admission to the Deputy Governor was not made under oath, does not render it inadmissible for the purpose of showing that appellant's version of how the crime was committed and the reasons therefor, made before the trial, substantially contradicted his testimony before the Court below. Defense counsel invokes the Supreme Court's advice in People *vs.* Flores, 58 Phil., 138, to the effect that "little men," ignorant persons accused of crime, should be given adequate protection to prevent any violation of their constitutional right to be silent. The rule was directed against indiscriminate attempts to secure admissions of guilt, and does not apply to exculpatory statements like Exhibit A. There is no reason in law or justice why the prosecution could or should not make use of such statements, not as a link in the chain of circumstances showing guilt, but to prove that appellant's credibility is not to be relied upon.

APPEAL from a judgment of the Court of First Instance of Sulu. Villalobos, J.

The facts are stated in the opinion of the court.

Benjamin S. Ohnick for appellant.

Assistant Solicitor General Rosal and *Solicitor Vivo* for appellee.

REYES, J. B. L., *J.:*

Salahi Sahi appeals from the decision of the Court of First Instance of Sulu finding him guilty of homicide on the person of Amilhusin and sentencing him to not less than 6 years of *prisión correccional* to 10 years of *prisión mayor* with the accessories prescribed by law, to pay ₱2,000 as indemnity to the heirs of the deceased, and the costs of the proceedings.

The evidence for the prosecution consists primarily in the testimony of two eye-witnesses, San Ramon and Arajan Juaini, who testified that as the deceased Amilhusin was on his way to return a *kris* to Mayor Panglima Gani of Buton, municipal district of Parang, Sulu, on September 11, 1946, he was haled by one Imam Jamsani, who asked him to enter the house of the deceased. It was about 5 o'clock in the afternoon. When Amilhusin reached the *batalan* or bridge of the house, Jamsani grabbed the *kris* carried by the former, while appellant herein, Salahi Sahi, and a companion by the name of Hadjirol, attacked Amilhusin with lances and inflicted upon him seven wounds as a result of which he died. The witnesses immediately reported the incident to Mayor Panglima Gani who, accompanied by policemen, repaired to the scene of the crime and found Amilhusin dead on the *batalan*. Only Hadjirol and Jamsani were in the place and they were arrested. The appellant had left before the police arrived but that very night he surrendered to the Deputy Governor, to whom he made a statement (Exhibit A) admitting the homicide and ascribing the killing to a dispute over a two-year old debt that the deceased owed the mother of the appellant.

The killing was admitted by the appellant Sahi at his trial. He then sought to justify it by testifying that the deceased, accompanied by other moros, assaulted his house, with intent of robbing the inmates, to the extent of cutting open the door and inflicting wounds on the appellant's sister. The latter, however, was not presented as a witness, nor was any corroboration given.

Counsel *de oficio* in this instance alleges that the trial court erred: (1) in admitting the extra judicial admission of the accused appellant to the Deputy Governor as sufficient proof of the motive for the killing; (2) in convicting the appellant of the crime charged in absence of satisfactory proof of motive; and (3) in not appreciating in his favor the mitigating circumstances of passion and obfuscation and of sufficient provocation on the part of the deceased.

In effect, the argument of counsel in the first two assignments of error can be reduced to the thesis that there was no competent evidence to show the motive why appellant Salahi Sahi killed Amilhusin. Granting this to be true, still there is sufficient reason for convicting the accused, considering that the killing was seen and described by two eye witnesses who appear truthful and disinterested. It is well established doctrine in this jurisdiction that where admission or credible direct evidence shows that a killing has been committed, proof of motive is not indispensable (People *vs.* Ragsac, 6 Phil., 146; People *vs.* Ramponit, 62 Phil., 284; People *vs.* Buyco, GR L–539 [SC], January 27, 1948.) Evidence of motive may be important where conflicting versions as to the killing exist (People *vs.* Zamora, 59 Phil., 568) or there is doubt as to the identity of the

accused, or he pleads exemption from responsibility (People *vs.* De la Cruz, [CA] 36 Off. Gaz., p. 2667). In this particular case, however, there is direct proof that the crime was committed by the appellant, and it destroys his version of the occurrence by establishing that Amilhusin was alone when killed.

The mere fact that the appellant's statement to the Deputy Governor (Exhibit A) was not made under oath, does not render it inadmissible for the purpose of showing that appellant's version of how the crime was committed and the reasons therefor, made before the trial, substantially contradicted his testimony before the Court below. Counsel invokes the Supreme Court's advice in People *vs.* Flores, 58 Phil., 138, to the effect that "little men," ignorant persons accused of crimes, should be given adequate protection to prevent any violation of their constitutional right to be silent. The rule was directed against indiscriminate attempts to secure admissions of guilt, and does not apply to exculpatory statements like Exhibit A. We find no reason in law or justice why the prosecution could or should not make use of such statements, not as a link in the chain of circumstances showing guilt, but to prove that appellant's credibility is not to be relied upon. And in this particular case, defendant's veracity is all important. Having admitted that he did kill Amilhusin, it was for him to establish sufficient justification therefor. His attempt to blame Amilhusin for violently entering his house with intent to rob, is plainly unworthy of credence considering first, that it is directly contradicted by the testimony of eye witnesses who saw the deceased enter the house alone; then by appellant's failure to produce his sister to corroborate and support his story, and in the third place by the irreconcilable versions that he gave of the incident to the Deputy Governor and to the trial Court. There being no other evidence to explain the motive and circumstances that attended the homicide, the Court below was not in error in finding the defendant appellant guilty of voluntarily killing a fellow man and sentencing him accordingly.

The contention of the defense that appellant herein should have been given the benefit of two additional mitigating circumstances is exclusively based on the assumption that his statement to the Deputy Governor is truthful. As already observed there is nothing in the records of this case that will enable us to state that Exhibit A is more entitled to credence as compared with the version of the accused given under oath in the Court of First Instance. Both statements radically contradict each other, and there being no supporting statement in favor of either, neither of them can be given credit. Furthermore, the argument for the defense runs here into contradiction. It asks that the statement to the Deputy

Governor (Exhibit A) be rejected, but at the same time prays that it be taken into consideration in favor of the defense, even if the latter has not submitted it as part of its own proof.

The lower Court correctly appreciated in favor of the appellant the mitigating circumstances of lack of instruction and of voluntary surrender; but as pointed out by the Solicitor General, one of these circumstances is offset by the aggravating circumstances of superior strength, since the deceased Amilhusin was attacked by no less than three aggressors, two of them armed with lances. It follows that instead of applying the penalty next lower in degree, the lower Court should have imposed only the minimum of the penalty prescribed for homicide, which was the crime charged.

Therefore, the conviction of the accused is affirmed but the penalty is modified by increasing the same to the minimum of *reclusión temporal.* Under the Indeterminate Sentence Law, the correct penalty is not less than six (6) years and 1 day of *prisión mayor* to not more than twelve (12) years and 1 day of *reclusión temporal.* Thus modified, the decision appealed from is affirmed in all other respects, with costs against appellant.

Gutierrez David and *Dizon, JJ.*, concur.

Judgment modified.

[No. 1061–R. July 22, 1948]

Intestate estate of Juan Carrero, deseased: ANTONIO LEGARZA, administrator and appellant, *vs.* FUAD JUREIDINI, claimant and appellee.

1. EVIDENCE; WITNESSES, TESTIMONY OF; SURVIVING PARTY, FACTS UPON WHICH HE MAY TESTIFY IN RELATION TO ESTATE OF DECEASED; SECTION 26, RULE 123, RULES OF COURT.—The provision of the Rules of Court prohibiting the testimony by a surviving party as to any matter of fact occurring before the death of the deceased is not absolute. While the object of the law is to guard against the temptation to give false testimony in regard to a given transaction on the part of the surviving party, one should not lose sight of the equally important rule that "the law was designed to aid in arriving at the truth and was not designed to supress the truth." (Tongco *vs.* Vianzon, 50 Phil., 698, 702; Ong Chua *vs.* Carr et al., 53 Phil., 975.) Claimant's testimony related to facts occurring not in the presence or within the hearing of the deceased Carrero, as the two never had any direct conversation or dealing with each other. Claimant did not testify on facts regarding the sale because Brimo had established that fact. He confined his declaration to the issuance or making out and delivery of the check Exhibit A, the loss or destruction of the stock certificates and the deed of sale when his house was burned, and the subsequent notice he gave to the Big Wedge Mining Company of his purchase and ownership of 15,000 shares, of which the deceased had no personal knowledge.

Evidently, the prohibition should refer to those matters personally known to Carrero, for, on those that he did not known his lips could not have been closed upon his death, inasmuch as he could not testify to the same even before he died. (III Moran on Evidence, 1947 Ed., pp. 222–223.)

2. STATUTE OF FRAUDS; STOCK CERTIFICATE, LOSS OF DEED OF SALE OF; TRANSACTION BEING A COMPLETE AND CONSUMMATED SALE STATUTE OF FRAUDS IS INAPPLICABLE; CASE AT BAR.—The trial court was correct when it ruled that the Statute of Frauds relied upon by the appellant was not applicable in the instant case. The transaction was a complete and consummated sale: as between the parties, nothing more was left to be done. The sale having been evidenced by the documents aforementioned which were lost or destroyed, the trial court properly allowed the introduction of secondary evidence of the contents thereof. (Section 51, rule 123. III Moran on Evidence, p. 167, citing Chason *vs.* Cheely, 6 Ga. 554, 557; Pomeroy *vs.* Fish, op., cit., p. 78.)

APPEAL from an order of the Court of First Instance of Manila. Gutierrez David, J.

The facts are stated in the opinion of the court.

Ramirez & Ortigas for appellant.
Ohnick, Velilia & Balonkita for appellee.

PAREDES, *J.:*

Fuad Jureidini herein appellee, claims to be the owner of 15,000 shares of the Big Wedge Mining Company, included in the 45,000 shares of the same company listed among the inventoried assets of the estate of Juan Carrero who died on February 15, 1945. The ownership is based on the purchase of said shares for ₱25,500 from Carrero on April 18, 1944, through stock broker Henry A. Brimo, who was requested by Carrero's son-in-law, Antonio Legarza, to sell said shares. Carrero and Jureidini never met personally to effect the sale by themselves, but depended on the representations and mediation of Legarza and Brimo.

Brimo testified that sometime in April and May, 1944, he effected sales of various shares of stock belonging to Carrero, such as the Lepanto, Masbate Consolidated, Antamok and others, including the Big Wedge shares bought by appellee which consisted of 15,000 shares, covered by two certificates for 10,000 and 5,000 shares, respectively; that the price was ₱1.70 per share, or a total of ₱25,500, of which ₱15,500 was paid in check, Exhibit A, and ₱10,000 in cash by Jureidini; that the check and cash were delivered by him (Brimo) to Legarza with whom he split the commission, Legarza having turned over the payment to Carrero, who endorsed the check and deposited it on April 18, 1944, to his account with the bank of the Philippine Islands; and that the two stock certificates, both endorsed in blank and accompanied by a deed of sale signed by Carrero, were delivered by him (Brimo) to Jureidini.

Jureidini declared that he bought the shares in question, having written on the check, Exhibit A, the words "April 18, 1944—Juan Carrero—Fifteen Thousand Five Hundred only—₱15,500," as he borrowed this amount from his cousin and business partner, Miguel Jureidini, by whom said check was issued and to whom the said amount was later repaid; that the Big Wedge shares in two stock certificates were delivered to him by Brimo duly endorsed in blank and accompanied by the corresponding deed of sale; that he was not able to transfer those stock certificates in his name because the Big Wedge Mining Company and all other mining companies were closed in 1944; that he lost the said two stock certificates together with the deed of sale when his house at No. 1012 Pennsylvania Street was burned during the liberation of Manila, and that he wrote the letter, Exhibit B, to the Big Wedge Mining Co. when it opened business after liberation, notifying the said Company of his purchase of 15,000 Big Wedge shares from the late Carrero.

Antonio Legarza, administrator of the intestate estate of Carrero and appellant herein, declared that he had no personal knowledge of appellee's claims; that, according to the widow and all the heirs of the deceased, the latter had not sold any share of the Big Wedge Mining Company; that as the one in charge of all the transactions of his late father-in-law, regarding sales of shares or stocks and the one who kept a record of all the shares sold, he knew of no sale of the Big Wedge shares having been made; that several sales of the mining shares of his father-in-law were effected by stock broker Brimo in April and May, 1944, and that the check Exhibit A was received by his father-in-law and credited to the latter's account with the bank.

The trial court adjudged the claimant Jureidini the owner of the 15,000 shares of the Big Wedge Mining Company in question, and ordered the administrator of the estate to exclude them from the inventory of the properties left by the deceased Carrero. Counsels for appellant contend that the trial court erred (1) in admitting the testimony of the claimant Fuad Jureidini; (2) in admitting oral evidence to prove a contract of this kind; (3) in considering as sufficient the evidence adduced by the claimant; and (4) in not denying the claim.

In the first assignment of error, appellant contends that Jureidini, being the surviving party, should not have allowed to testify on any matter occurring prior to the death of Carrero, against the estate of the deceased, relying upon the following rule:

SEC. 26. *Persons who cannot testify generally, or because of certain rleations to parties.*—The following persons cannot be witnesses:

* * * * * * *

(c) *Parties or assignors of parties* to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring *before* the death of such deceased person or before such person became of unsound mind. (Rule 123, Rules of Court.)

The trial judge, after a careful consideration of the appellant's objections, saw no valid reason or justification for excluding the testimony of the claimant. We find no error in his Honor's ruling, because the provision is not absolute. While the object of the law is to guard against the temptation to give false testimony in regard to a given transaction on the part of the surviving party, one should not lose sight of the equally important rule that "the law was designed to aid in arriving at the truth and was not designed to suppress the truth." (Tongco *vs.* Vianzon, 50 Phil., 698, 702; Ong Chua *vs.* Carr et al., 53 Phil., 975.) Justice Moran, commenting on this provision of law, says:

"The Supreme Court of California in construing these words laid down the following rule: 'The language is: 'any matter of fact occurring before the death of a deceased,' and this applies as well to things occurring without his presence as to those in which he may have participated.' *The rule, however, as stated, is so broad that if applied to its full extent, it may result in a manifest injustice to living persons. We believe that the matters prohibited by law are those occurring in the presence or within the hearing of the decedent to which he might testify of his personal knowledge if he were alive. The intent and purpose of the law is to close the lips of the surviving party* on matters upon which death has closed the lips of the decedent. *Facts not known personally to the latter cannot be said to be facts concerning which his lips have been closed by death for even before his death he could not testify thereto.* The object of the law is to secure mutuality between a surviving party and a deceased party; but when we seal the mouth of the former on facts to which the latter if alive cannot testify, we are certainly securing not a mutuality but undue advantages for a deceased person." (Italics ours.) (III Moran on Evidence, 1947 Ed., pp. 222–223.)

Claimant Jureidini's testimony related to facts occurring not in the presence or within the hearing of the deceased Carrero, as the two never had any direct conversation or dealing with each other. Jureidini did not testify on facts regarding the sale because Brimo had established that fact. He confined his declaration to the issuance or making out and delivery of the check Exhibit A, the loss or destruction of the stock certificates and the deed of sale when his house was burned, and the subsequent notice he gave to the Big Wedge Mining Company of his purchase and ownership of 15,000 shares, of which the deceased had no personal knowledge. Evidently, the prohibition should refer to those matters personally known to Carrero, for, on those that he did not know, his lips could not have been closed upon his death, inasmuch as he could not testify to the same even before he died.

In connection with the second assignment of error, the appellant claims that the price of the shares alleged to have been sold being ₱25,500, written proof of the existence of the contract should have been presented and oral proof rejected, relying upon the Statute of Frauds.

SEC. 21. *Agreements which must be evidenced by writing.*—The following agreements cannot be proved except by writing, or by some note or memorandum thereof, subscribed by the party sought to be charged, or by his agent, or by secondary evidence of its contents:

* * * * * * *

(*d*) An agreement for the sale of goods, chattels, or things in action, at a price not less than one hundred pesos, *unless* the buyer accepts and receives part of such goods and chattels, or the evidences, or some of them, of such things in action, *or pays at the time some part of the purchase money;* * * *. (Rule 123.)

The sale of 15,000 Big Wedge shares under consideration was shown to have been evidence by a deed of sale which was lost. The stock certificates representing the said shares were endorsed in blank and delivered to the Claimant who made full payment thereof upon such delivery. The trial court was, therefore, correct when it ruled that the Statute of Frauds relied upon by the appellant was not applicable in the instant case. The transaction was a complete and consummated sale: as between the parties, nothing more was left to be done. The comment of Chief Justice Moran on the subject is timely:

"The Statute of Frauds is applicable only to executory contracts. It is neither applicable to executed contracts nor to contracts partially performed. The reason is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. On the other hand the commission of fraud in executed contract is reduced to a minimum because (1) the intention of the parties is apparent by the execution and (2) *execution concludes*, in most cases, the rights of the parties. (III Moran on Evidence, p. 167, citing Chason *vs.* Cheely, 6 Ga., 554, 557; Pomeroy & Fish, op. cit., p. 78.)

The Supreme Court said:

"* * * Said section 335 of our Code of Civil Procedure refers to executory rather than executed contracts; and the one before us is a contract partially executed since a part of the price was paid by the applicants in the year 1912, to the spouses Bartolome Nicanor and Maria Almirol, and pursuant to said contract said spouses delivered then the land to the herein applicants, as well as the documents pertaining thereto. Consequently, the evidence introduced in this case relative to the sale in question should not be rejected, but must be taken into account, and is considered by this court in the decision of this case." (Almirol et al. *vs.* Monserrat, 48 Phil., 67, 70. *See* also Diana *vs.* Macalibo, Vol. 2, Off. Gaz., 962, Oct. 1943; Robles *vs.* Lizarraga Ramos, 50 Phil., 387.)

In this connection, appellant submits the propositions "Que la prueba de la excepción debe constar por escrito, es decir, que si no existe prueba por escrito del *contrato,*

debe exigirse prueba por escrito del *cumplimiento* total o parcial del contrato," "o al menos, debe probarse mediante prueba concluyente." The second proposition will be taken up in connection with the third assignment of error. With respect to the first, the contention appears to be untenable. The deed of sale and certificates of stock showed a full compliance with the contract on the part of the claimant. The appellant would not have delivered the said documents to the claimant, unless the shares had been totally paid by the latter. The check Exhibit A, even discarding the testimony of the claimant with respect to the cash payment of ₱10,000, clearly shows at least the partial payment of the price. The sale having been evidenced by the documents aforementioned which were lost or destroyed, the trial court properly allowed the introduction of secondary evidence of the contents thereof. (Section 51, Rule 123.)

The third assignment of error refers to the sufficiency of the evidence. Appellant alleges that Jureidini's testimony was "prejudiced, partial and suspicious," and that Brimo was an "interested witness." On the other hand, appellee contends that Legarza's testimony was biased, incredible and uncorroborated. The appellant points specifically to the following as showing the inconsistency and incongruency of the claimant's position:

(*a*) The check Exhibit A did not belong to claimant, but to his cousin Miguel Jureidini;

(*b*) The check was merely for ₱15,500 when claimant could have issued a check for the whole purchase price of ₱25,500, as in those days there was an abundance of money;

(*c*) Legarza's explanation to the effect that the check was paid by Miguel Jureidini in payment of 25,000 Lepanto shares at 62 centavos per share, is more credible than Brimo's story;

(*d*) Brimo's contradictory statements show that he was not sure of the number of shares he allegedly sold;

(*e*) The appellant and counsel had always cooperated with the purchasers of shares belonging to Carrero and had given them assistance to obtain their certificates of stock or titles thereto.

The trial court which had full opportunity to observe the demeanor of and the manner the witnesses had testified during the hearing, declared that "the testimony of this disinterested witness alone (referring to Brimo) is considered by the court sufficient to establish the sale." We are, therefore, not prepared to alter this conclusion, in the absence of proof that the said court had overlooked or misconstrued material facts and circumstances presented for its consideration. We have also looked carefully into the facts appearing of record, and we find that the tes-

timony of Brimo, corroborated by Jureidini and supported by Exhibits A, B and C, contains all the earmarks of truth and preponderates over that of the appellant. There is nothing unusual that the claimant had to borrow money from his cousin and use the latter's check therefor when, as has been shown, he did not have enough cash at the time, and when it appears further that the amount of said check had been refunded by him. There is nothing irregular that Miguel Jureidini had to issue a check, merely for the sum of ₱15,500 to the claimant, when he could have issued more than that amount. All that said claimant needed then to add to his cash of ₱10,000, was the amount represented by the said check. These were transactions done in the ordinary course of legitimate business practice. Brimo's story regarding the purchase of Big Wedge shares is more credible than Legarza's explanation to the effect that the check was issued by Miguel Jureidini in payment of 25,000 Lepanto shares at 62 centavos per share. Several unavailing attempts were made on the part of appellant's counsel to discredit Brimo, by trying to have him admit that Exhibit A was possibly in payment of Lepanto and other mining shares, but Brimo answered he was "positively sure" that it was in part payment of the Big Wedge shares. When Brimo was asked whether the Big Wedge shares were being sold at five or six pesos per share at the time, he categorically answered "that is definitely not true." And when asked again whether he sold more than 25,000 Lepanto shares, he answered he was sure he did not sell a total of 25,000 Lepanto shares, excluding the 8,521 shares bought by Antonio Syyap, although he was certain he sold 10,000 Lepanto shares to Miguel Jureidini at 50 centavos a share. His straightforwardness and the steadfastness which characterized his answers as well as his frank admission to facts which might even prejudice his cause, make Brimo's testimony reliable, credible and convincing.

Let us see the other side of the coin. Legarza testified that he never knew who the buyers were of the shares of his father-in-law. But when confronted with the deed of sale Exhibit C, wherein his name appears as a witness to the sale of 5,000 Lepanto shares in favor of one Frederick Knecht, he was the most bewildered man. Questioned as to whether the 25,000 Lepanto shares were sold to only one person, Legarza replied: "Quien era el comprador, nunca sabía yo. Yo le entregaba al Sr. Brimo el certifico endosado, y nada más. Quién era el comprador, nunca me lo decía," which could not have been true, because, as the seller of great quantities of mining shares, he should have known at least the buyer of the same. The act of feigning ignorance and the fact that he was the son-in-law of Carrero and concurrently the administrator of the latter's

estate, render Legarza's lone and uncorroborated testimony weak and highly unbelievable.

In the course of Brimo's cross-examination, efforts were exerted by appellant's counsel to draw him into admitting that he had contradicted himself before Legarza, as to the number of the Big Wedge shares sold. The alleged contradiction was more apparent than real. Brimo pointed out that Jureidini did not say "Remember the 15,000 shares?," but simply remark: "Remember the Big Wedge?," without specifying the number of shares. Brimo admitted having sold Big Wedge and other mining shares during the occupation, and it was most natural that he could not have recalled at once the exact number of Big Wedge shares he had sold in this particular transaction, although he was positive that he had sold such shares. His memory having been refreshed with the details of the transaction and after Jureidini had computed the price on a piece of paper, just after the interview he had with Legarza to whom he had told it was 10,000 shares, said Brimo was reminded that 15,000 Big Wedge shares were involved in the said transaction. This explanation which we deem satisfactory, cannot affect the veracity of Brimo as a witness. Human memory is frail; witnesses in court are even permitted to refresh their momory.

It is conceded that appellant and his counsel had ratified the sales made by the deceased and gave assistance to purchasers in securing their new certificates of stock in lieu of the lost ones, but they only did so when documentary proofs were produced, for then they did not have any other alternative.

Finding no error in the judgment appealed from, the same is hereby affirmed in toto. So ordered.

Labrador and *Abad Santos, JJ.*, concur.

Judgment affirmed.

[No. 1665-R. Julio 29, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* SERGIO REVILLA, MATEO CASTRO, DIOSDADO GUINTO, LUIS BAUTISTA y TOMÁS CANLAS, acusados y apelantes.

DERECHO PENAL; ROBO CON VIOLACIÓN; CASO DE AUTOS.—La teoría de que en el delito de robo en cuadrilla con violación multiple, todos aquellos que no han evitado la violación responden por igual con los que la cometieron, carece de aplicación en el caso de autos, que el Juzgado *a quo* acertadamente lo calificó de simple robo con violación, porque de acuerdo con las pruebas R y B eran los únicos que estaban armados de pistola y revolver respectivamente.

APELACIÓN contra una sentecia del Juzgado de Primera Instancia de Manila. Barrios, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Jose S. Sarte en representación de los apelantes Revilla y Canlas.

Sres. Garcia & Tolentino en representación del apelante Castro.

D. Felipe Lim Reyes en representación de los apelantes Guinto y Bautista.

El Procurador General Auxiliar Sr. Kapunan, Jr. y el *Procurador Sr. Avanceña* en representación del apelado.

DE LA ROSA, *M.:*

El Juzgado de Primera Instancia de esta ciudad de Manila sentenció a los apelantes Sergio Revilla, Diosdado Guinto, Luis Bautista, Mateo Castro y Tomás Canlas a sufrir la pena indeterminada de diez (10) años y un (1) día de prisión mayor a veinte (20) años de reclusión temporal, a indemnizar mancomunada y solidariamente a Ulyses Garcia y Concordia Gutiérrez en la suma de ₱972, con las costas a prorrata, por el delito de robo con violación.

Hacia las 2 de la noche del 12 de junio de 1946, seis o siete individuos enmascarados, pasando unos por la puerta y otros por la ventana, entraron en la casa No. 1441 de la calle Antipolo Extension, Manila, residencia de los esposos Ulyses García y Concordia Gutiérrez, y con violencia de allí se llevaron efectos por valor de ₱1,685, mas ₱8.00 en metálico, habiendo además cinco de ellos conseguido yacer con Nenita Alcantara mediante fuerza.

A las 4:00 de la madrugada de ese día 12 de junio, los policias Liwanag, Aspili, Tamayo, Molina y Robles, que al mando del primero formaban un pelotón contra el robo, pasaban por la calle Miguelin, Sampaloc, Manila, cuando llamaron su atención varios individous debajo de la casa 946, repartiéndose efectos que tenían delante. Pareciéndoles sospechosos los sorprendieron. Eran Sergio Revilla, Diosdado Guinto, Luis Bautista, Mateo Castro y Tomás Canlas. Del primero ocuparon una pistola calibre .45 y del tercero un revolver calibre .30. Liwanag, en sus primeras averiguaciones, supo de Canlas que los artículos que sus compañeros y él se dividían eran robados. Llevados a la estación de policía No. 2 de esta ciudad, Guinto, que conocía personalmente al Sargento Bernardino Versoza, confesóle el robo que acababan de cometer y ordenó a su sobrino Canlas que indicara a éste la casa donde habían robado. Canlas llevó a Versoza y sus compañeros a la casa No. 1441, Antipolo Extension, y éstos la hallaron en desorden, y a García en el momento en que iba a salir, para dar cuenta del suceso a la policía.

García identificó a Revilla, Luis Bautista, Castro, Tolentino y Canlas, asegurando que los conoció y son de los malhechores que entraron en su casa en la noche de autos, y reconoció los artículos recuperados que éstos se llevaron de su casa, entre ellos el anillo Exhíbit B, que lleva grabado su nombre, "U. García," el reloj de pulsera Exhíbit C, el fountain flashlight Exhibit D, el fountain pen Shaffer Exhibit E y el destornillador Exhibit F.

Nenita Alcantara, de entre un grupo de personas, indicó a Revilla, Guinto, Luis Bautista y Benedicto Bautista, como de los sátiros que consiguieron yacer con ella contra su voluntad, por la fuerza, tapando su boca con una toalla para que no pudiera gritar, y declaró que los conoció porque se quitaron sus mascaras el yacer con ella y se alumbraban con sus propios flashlights, y que otro más quería gozarla, pero no supo lo que hizo de ella, pues que, al decirle que se sentía muy debil, le pegó en la frente y perdió el conocimiento.

Concordia Gutiérrez testificó que a las 2:00 de la noche de ese día 12 de junio se despertó porque la vieja Alejandra Cabucab, que dormía en el balcón, la llamó, diciéndola que tenía sed. Abrió las luces electricas del balcon, la sala y el taller. Levantó la tranquilla de la puerta y, al abrirse esta, se presentaron dos individuos con revolveres, que luego entraron seguidos por otros,

"R. Sacaran todo lo que querían dentro de la casa.
R. Ropas, dinero, alhajas, etc."
R. Según lo que recuerdo, no menos de dos mil pesos."
(T. n. t. tomadas en 24 de marzo, 1947, p. 17)

de los cuales efectos fueron recobrados los que se especifican en los números del 1 al 27 de la lista Exhíbit A. Mientras escogían los artículos que querían llevarse, la

"R. (Me) pegaron, (me) maltrataron, porque entonces no podía abrir los cajones, no sabía como abrirlos.", (t. n. t. tomadas el 24 de marzo, 1947, p. 19)

y después de seleccionar y reunirles, como no podían cerrar la luz, rompieron las bombillas eléctricas. Revilla y Tolentino la hicieron entrar en el cuarto para violarla, más ella protestó, y uno que palpara su vientre y hallara que estaba en cinta los aconsejó que la dejaran. Entonces hicieron entrar a Nenita Alcantara, a quien, después que los ladrones la abandonaran y se fueran de la casa, vió que

"R. Estaba llorando con la cabeza o con el cabello desgreñado y cabizbajo encima de la cama.",
(T. n. t. tomadas en 24 de marzo, 1947 p. 18)

Preguntada por los que asaltaron su casa, contesto:

"R. No sé sus nombres, pero conozco sus caras.
"P. Donde esta ahora?—R. Estan aquí en el Juzgado.
"P. Sírvase indicarles?—R. Estas personas (Testigo tocando en sus hombros a los acusados y diciendo sus nombres correspondientes.)"
(T.n.t. tomadas en 24 de marzo, 1947, p. 16).

Los apelantes en los affidávits que han prestado, admiten sus respectivas participaciones en el robo en la casa de los esposos García y Gutiérrez; y Revilla, Castro y Luis Bautista admiten además que violaron a Alcántara, en tanto que Canlas y Guinto niegan haberla violado, añadiendo el último que precisamente impidió a Revilla que violara a Gutiérrez. Pero, con excepción de Canlas, todos ellos alegan ahora que hicieron tales declaraciones porque

han sido maltratados de obra. En contra de esta alegación militan estas circunstancias: (*a*) Benedicto Bautista, en su affidávit Exhíbit J, no admite participación alguna en el robo de autos y fué absuelto; (*b*) Guinto, no obstante haber sido identificado por Alcántara como uno de los que la violaron, en su affidávit Exhíbit I, niega que haya tenido acceso carnal con ella, afirmando que defendió a Gutiérrez cuando a ésta Revilla la quería violar; (*c*) Canlas, al declarar como testigo, afirmó:

"Q. Now, coming to Exhibit L, you stated that you were obliged or compelled to sign that because you were given several blows, fist blows; is that true?—A. No, I was not given fist-blows, but I signed Exhibit L, as they told me to sign it, and after that they will release me.

Q. So you were not maltreated at all in connection with Exhibit L?—A. Yes, sir, I was not maltreated at all."; (t.n.t. tomadas en 15 de mayo, 1947, pp. 6 y 7)

(*d*) Guinto, que conocía al Sargento Versoza, no sólo le confesó el robo que acababan de cometer sino que ordenó a su sobrino Canlas que indicara a éste la casa robada; y (*e*) Revilla, Guinto, Luis Bautista, Castro y Canlas accidentalmente fueron sorprendidos por el pelotón contra el robo, mandado por Liwanag, mientras distribuían entre sí los artículos robados de la casa de los ofendidos Ulysos y Gutiérrez, en las primeras horas de la noche del 12 de junio de 1946, y ninguna explicación dan porque se encontraban en su poder esos efectos.

Los apelantes insisten en su coartada de que en 11 de junio de 1946 fueron arrestados por otro delito de robo que se vió ante el Honorable Juez Peña, que preside una de las salas del Juzgado de primera instancia de esta ciudad de Manila. Liwanag explica que en ello ha habido error de fechas, porque sus compañeros y él arrestaron a todos los apelantes en la mañana del 12 de dicho mes de junio; y debe ser así, pues que de otro modo no se hubiesen encontrado, a las 4:00 de la madrugada, en poder de los acusados los artículos que ellos se llevaron de la casa de los ofendidos García y Gutiérrez, a las 2:00 de esa noche del 12 de junio de 1946.

Castro y Canlas, que no han sido indicados por Alcántara de entre los que la violaron, cotienden que solo responden en este caso por el delito de robo castigado en el párrafo quinto del Artículo 294 del Código Penal Revisado. El Procurador General sostiene que como el caso es de robo en cuadrilla con violación multiple, Castro y Canlas responden por la violación cometida por sus compañeros porque no la han evitado. El Juzgado condenó a los apelantes por robo con violación, y las pruebas sostienen esta condena, porque solo demuestran que Revilla y Luis Bautista eran los únicos que estaban armados de pistola y revólver, respectivamente. Si bien Castro no ha sido indicado por Alcántara, como uno de los que la violaron, pero él admite

en su affidávit Exhíbit H que también yació con ella, y tengase en cuenta que ésta declaró:

"R. Otro quería yacer conmigo también, porque eran cinco personas; pero tuve que suplicarle aquél que me dispensara ya, porque ya estaba muy debil, y no se mas que fué lo que pasó, porque alguien me pegó en la frente.

R. No puedo hacer memoria ahora, porque estaba completamente mareada en aquella ocasión, y no sé mas si me había ocurrido algo todavía, ni me he percatado que ellos habían salido ya. (T. n. t. tomadas en 14 de enero, 1947, p. 15).

Canlas, sí, no ha admitido en su affidávit Exhíbit L que ha violado a Alcántara, ni ésta le ha indicado como uno de sus violadores.

El Procurador General propone en su alegato la confirmación de la sentencia del Juzgado *a quo* y que los apelantes sean además condenados a indemnizar a Alcántara en la cantidad de ₱4,000, de conformidad con lo dispuesto en el artículo 345 del Código Penal Revisado. En este caso, ₱2,000 de indemnización sería una compensación suficiente.

El Juzgado impuso la pena correspondiente en su grado medio, por lo que en cuanto a Canlas la pena debe ser la indeterminada de cuatro (4) meses de arresto mayor a seis (6) años y diez (10) meses de prisión mayor.

Condenando, además, a los apelantes, Sergio Revilla, Mateo Castro, Diosdado Guinto y Luis Bautista a indemnizar mancomunada y solidariamente a Nenita Alcántara en la cantidad de ₱2,000.00, y rebajando la pena impuesto a Tomás Canlas a la indeterminada de cuatro (4) meses de arresto mayor a seis (6) años y diez (10) meses de prisión mayor, se confirma en todo lo demás la sentencia apelada, con las costas a los apelantes. Así se ordena.

Jugo y *Labrador, MM.*, están conformes.

Se modifica la sentencia.

[No. 896–R. July 31, 1948]

TEODORICA FAVIS VDA. DE RIVERO, plaintiff and appellee, *vs.* ESTEFANIA SERRANO ET AL., defendants. JESUS SERRANO, CONCEPCION SERRANO ET AL., defendants and appellants.

1. SUCCESSION; RIGHT OF HEIR TO DISPOSE OF HIS INTERESTS IN THE ESTATE OF HIS DECEASED FATHER; CASE AT BAR.—In the case at bar, S.S. in disposing of his interest in the estate of his father did not dispose of any specific property but merely of his interest as heir of his father. This interest was a right personal and exclusive of his and acquired from the instant that his father died. This right did not and could not form part of the estate of his father. As a matter of fact, the law expressly recognizes the right of an heir to dispose of his successional rights before partition, subject only to legal redemption by his coheirs within thirty days (article 1067 of the

Civil Code; Broce *vs.* De la Viña, 20 Phil., 423; Wenceslao *vs.* Calimon, 46 Phil., 906; Hernaez *vs.* Hernaez, 32 Phil., 214).

2. ID.; FUTURE INHERITANCE, NOT PROPER SUBJECT OF CONTRACT.—Since the deed of sale executed by S.S. only undertook to transfer the vendor's "participation in the property left by his deceased father, L. S.," it follows that the property that did not belong to L. S., but to his wife, U. S., mother of the vendor, were not at all affected by the conveyance. Indeed, he could not validly have conveyed the same, because his mother was still alive at the time of the execution of the deed and, therefore, at that time the vendor's interest in the property of his mother was a *future inheritance* and could not be the subject matter of a valid contract, pursuant to paragraph 2 of article 1271, of the Civil Code.

APPEAL from a judgment of the Court of First Instance of Ilocos Sur. Blanco, J.

The facts are stated in the opinion of the court.

Eloy B. Bello for appellant.
Juan Amor for appellee.

REYES, J. B. L., *J.:*

By a notarial document executed on the 24th of November, 1926, the late Simeon Serrano sold to the plaintiff appellee, Teodorica Favis Vda. de Rivero, one-seventh undivided interest in twenty-seven parcels of land as constituting his share in the estate of his deceased father, Don Leandro Serrano. The consideration is recited to be ₱4,010. It was stipulated in the deed that vendor would have the right to redeem the aforesaid 1/7 in the conveyed land within one year from the date of its execution, and should he fail to do so, the buyer would acquire absolute and irrevocable title thereto.

On November 22, 1937 Teodorica Favis Vda. de Rivero initiated this case by filing a complaint in the Court of First Instance of Ilocos Sur against the heirs of Leandro Serrano and of Simeon Serrano, asking to be recognized as co-owner of 1/7 of the lots described in the deed and copied in the complaint as Appendix A. The defendants heirs of the vendor Simeon Serrano, now appellants, filed an answer denying under oath the validity, genuineness and due execution of the deed in favor of Teodorica Favis and claiming that the same was void *ab initio;* that Simeon Serrano was the administrator of the estate of his father Leandro Serrano in civil case No. 1821, when he executed the deed of sale above-mentioned, and as such, he could not dispose of the property because the same was in *custodia legis;* and that the action of the plaintiff had already prescribed. Said defendants further claimed ₱1,000, as damages, for the filing of the suit.

When the case was called for hearing in the Court below, a stipulation was entered into between the appellee Favis and some of defendants heirs of Leandro Serrano,

and as a result thereof, the plaintiff appellee excluded from the complaint the parcels described as lots (*c*), (*d*), (*f*), (*g*), (*j*), (*k*), (*m*), (*n*), (*o*), (*q*), (*u*), (*v*), (*w*), and (*x*), in Appendix A to her complaint, and dismissed her complaint against the heirs of Leandro Serrano, who possessed said lots. The case, therefore, continued only with reference to the parcels not excluded and against the heirs and successors in interest of the vendor Simeon Serrano. Trial finished, without evidence being presented for defendants, the lower Court entered judgment declaring the plaintiff appellee to be the owner of the entire parcels of land designated as lots (l), (ll), and (X) of Appendix A of the complaint and of one-sixth (1/6) undivided portion of parcels (*a*), (*b*), (*c*), (*h*), (*i*), (*j*), (*k*), (*p*), (*r*), (*rr*), (*s*) and (*t*) of said Appendix A and ordered the partition of the property held in common.

The heirs of Simeon Serrano appealed to this Court, and claim that the lower court erred in (1) not holding that the deed of sale executed by their late father Simeon Serrano in favor of the appellee was merely a loan with security instead of a sale with right to repurchase; (2) in refusing to hold that the aforesaid loan could no longer be recovered, as it was not filed in due time in the proceedings for the settlement of the estate of the debtor Simeon Serrano; (3) in not holding that the appellee's action was barred by the statute of limitations; and finally (4) in giving to appellee the ownership of three whole parcels and 1/6 interest in twelve other parcels of those described in Appendix A of the complaint. We shall take up these points separately.

1. With regard to the true nature of the transaction between Simeon Serrano and appellee Teodorica Favis Vda. de Rivero, it is sufficient to advert that the answer did not set up this defense, having merely denied the genuineness and validity of the deed. Moreover, the text of the contract is clear and unambiguous in character. There is not the slightest hint in the language used that the parties regarded the transaction as anything else but a true deed of sale with right to repurchase, and we find in the record nothing to justify a holding contrary to its plain tenor. Appellants argue that Teodorica Favis Vda. de Rivero testifying in the Court below, spoke of *debt* and her desire for *legal interest.* However, it is a fact that Simeon Serrano had borrowed various amounts from the plaintiff appellee, and the portions relied upon by the appellants obviously referred to the loan transactions that according to her, the heirs of Simeon had agreed to recognize. The appellee herself throughout her testimony insisted that the deed of sale with right to repurchase Exhibit A was a transaction entirely apart from the others.

It is argued that Simeon Serrano could not dispose of his interest in the estate of his father because said estate

was under administration and in *custodia legis*. Appellants obviously misapprehended the import of the document executed by their father. Simeon Serrano did not dispose of any specific property but merely of his interest as heir of his father Leandro Serrano. This interest (which he computed at 1/7 of the properties left by his father) was a right personal and exclusive of his and acquired from the instant that his father died. This right did not and could not form part of the estate of his father. As a matter of fact, the law expressly recognizes the right of an heir to dispose of his successional rights before partition, subject only to legal redemption by his coheirs within thirty days (article 1067 of the Civil Code; Broce *vs.* De la Viña, 20 Phil., 423; Wenceslao *vs.* Calimon, 46 Phil., 906; Hernaez *vs.* Hernaez, 32 Phil., 214).

2. If the transaction between the appellee and the late father of appellants was not of loan but one of sale with *pacto de retro* as we hold it to be, the appellee was not at all required to file a claim therefor in the estate of the deceased. Hence, the first and second assignments of error should be overruled.

3. The next issue is whether or not the action is barred by the statute of limitations. It is admitted that if the period is to be counted from the initial sale, more than ten years have elapsed; but not if counted from the expiration of the period to repurchase. No right of action on the part of the vendee *a retro* actually accrued until after the ownership became consolidated by the failure of the seller to redeem, because prior to that date the seller was entitled to reacquire ownership by redemption but could not be compelled to do so. There is nothing in the record to, on the other hand, indicate that the late Simeon Serrano at any time during the redemption period denied or contested the validity of the document executed by him or the right of the vendee, Teodorica Favis Vda. de Rivero, nor was it shown (for the appellants introduced no evidence in their behalf) at what date did Simeon Serrano begin to hold the property adversely against her, if he did so at all. While the appellee admitted that she never had physical possession of the lands described in the deed, such fact does not militate against her title, for she had acquired no specific thing, but only a co-owner's undivided right and participation; and besides, in cases of co-ownership, possession by any co-owner accrues to the benefit of all co-owners (articles 450 1933, Civil Code). There was neither acquisitive nor extinctive prescription in this case.

4. We disagree, however, with the lower Court in so far as it increased the participation of the appellee (*vice* Simeón Serrano) in the parcels not excluded from the suit to more than that specified in her complaint. According to the stipulation which is transcribed as Appendix A of

the brief for the appellee Teodorica Favis Vda. de Rivero, six (6) parcels, namely, lots (*i*), (*h*), (*p*), (*r*), (*rr*) and (*t*) were the exclusive property of the late Doña Ursula Azcueta, widow of Leandro Serrano, mother of the vendor Simeon Serrano, while parcel (*ñ*) is exclusive property of Doña Primitiva Serrano. In addition, plaintiff herself stipulated that only 1/7 belonged to the late Simeon Serrano in parcels (*a*), (*b*), (*e*), (*j*) and (*s*), while lots (1), (11) and (X) were apparently adjudicated *in toto* to the late Simeon Serrano in the liquidation of the estate of his father, as part of his share therein.

Since the deed of sale only undertook to transfer to the appellee all the vendor's *"participation in the property left by his deceased father, Don Leandro Serrano"*, it follows that the property that did not belong to Leandro Serrano, but to his wife Doña Ursula Azcueta, another of Simeon Serrano, lots (*i*), (*h*), (*p*), (*r*), (*rr*), and (*t*) were not all affected by the conveyance. Nowhere in the deed does it appear that the late Simeon Serrano intended to convey his hereditary interest in the properties of his mother. Indeed, he could not validly have done so, because his mother was still alive at the time of the execution of the deed of sale Exhibit A, counsel having stipulated before us that Doña Ursula Azcueta died only in 1932. Therefore, in 1926, Simeon Serrano's interest in the property of his mother was a *future inheritance,* and could not validly be the subject matter of a contract. Article 1271, paragraph 2, of the Civil Code expessly provides that—

"Nevertheless, no contract may be entered into with respect to future inheritances, except those the object of which is to make a division *inter vivos* of an estate, in accordance with Article 1056."

The same considerations preclude us from holding that the deed of sale Exhibit A could possibly refer to the lot (ñ) adjudicated to the sister of Simeon Serrano, Primitiva Serrano, who did not die until after the execution of the deed in question.

The lower Court and the appellee seem to proceed on the theory that by the deed of sale, Teodorica Favis Vda. de Rivero was *subrogated* to all the rights of Simeon Serrano in the property of his parents and sister Primitiva, and that the share of Simeon Serrano in all three estates accrued to the benefit of appellee. For the reasons above stated, this view point is clearly indefensible. Teodorica Favis Vda. de Rivero could have acquired and did acquire only the property interest of Simeon Serrano in the estate of his father; but the deed of sale did not subrogate her in the blood relationship of Simeon with his mother and sister. The deed of sale did not and could not make Teodorica Favis the daughter of Doña Ursula Azcueta or the sister of Primitiva Serrano, so as to entitle her to succeed

either of them. Relationship (parentesco), and the heirship that flows from it, are non-transferable. The fact that all the properties involved appear to have been liquidated in one proceeding can not alter the case or the laws of succession.

The decision in favor of Teodorica Favis Vda. de Rivero based on the contract Exhibit A, should be strictly limited to the totality of the parcels (1), (11) and (X) adjudicated to Simeon Serrano and to not more than one seventh undivided participation in parcels (*a*), (*b*), (*e*), (*j*) and (*a*) of Appendix A to the complaint. The late Simeon Serrano's participation in the estate of his mother and sister can not be lawfully included therein.

Thus modified, the decision appealed from is affirmed without costs in this instance.

Labrador and *Paredes, JJ.*, concur.

Judgment modified.

UNITED STATES OF AMERICA
PHILIPPINE ALIEN PROPERTY ADMINISTRATION

RETURN ORDER NO. 39

The Vested Property Claims Committee having considered the claim set forth below and having issued a Determination with respect thereto, which is incorporated by reference herein and no personal review of such final determination having been requested or undertaken,

It is ordered that the claimed property described below and in the determination, be returned:

Claimant.—William R. Odell, Jr. c/o International Harvester Company of the Philippines, 154 Marques de Comillas, Manila, Philippines.

Claim No. 1098.

Description of property.—One thousand two hundred (1,200) rails, permanent, each approximately 5.7 meters long, vested as Item 3, Exhibit B, of Vesting Order No. P–692, dated October 6, 1947.

Appropriate documents and papers effectuating this Order will issue.

Executed at Manila, Philippines, this 6th day of March, 1950.

WILLIAM R. ALLEN
Deputy Administrator

Filed with the OFFICIAL GAZETTE on March 6, 1950, at 3:55 p.m.

RETURN ORDER NO. 40

The vested Property Claims Committee having considered the claim set forth below and having issued a Determination with respect thereto, which is incorporated by reference herein, and no personal review of such final determination having been requested or undertaken,

It is ordered that the property described below and in the determination be returned upon payment by the claimant of the sum of ₱400, Philippine currency, to the Philippine Alien Property Administrator:

Claimant.—Teodoro Juliano, Cotabato, Cotabato, Philippines.

Claim No. 1190.

Description of property.—A wooden frame, one-story residential building, having a floor space of 126 square meters, in fair condition, located at Mabini Street, municipality and Province of Cotabato, erected on land formerly owned by Saturnino Alvarez (now owned by Teodoro Juliano), together with any and all claims for rents, refunds, benefits or other payments arising from the ownership of such property vested under V. O. No. P–584, dated March 12, 1948.

Appropriate documents and papers effectuating this Order will issue.

Executed at Manila, Philippines, on March 10, 1950.

WILLIAM R. ALLEN
Deputy Administrator

Filed with the OFFICIAL GAZATTE on March 10, 1950,